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November 19, 2017

VIA EMAIL AND ECF

The Honorable Shelley C. Chapman
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004

Re: In re Lehman Brothers Holdings Inc., et al., Ch. 11 Case No. 08-13555 (SCC)

Dear Judge Chapman:

We write on behalf of the RMBS Trustees in response to the Plan Administrator's letter asking this Court to preclude the Trustees from relying on redirect testimony properly elicited from Mr. James Aronoff on Friday. As an initial matter, we reiterate our request that the Court order the Plan Administrator to seek relief by motion on notice as required by Fed. R. Bankr. P. 9014(a). "[P]reclusion of evidence is a 'harsh' remedy that 'should be imposed only in rare situations,'" *Tangoree v. Mako's, Inc.*, 2002 WL 206988, at *6 (S.D.N.Y. Feb. 8, 2002) (quoting *Update Art, Inc. v. Modiin Publishing, Ltd.*, 843 F.2d 67, 71 (2d Cir.1988), and certainly not on the basis of a two-page letter, devoid of any applicable legal authority, submitted to Your Honor on a Sunday morning. As the Trustees will not cite or rely on any of Mr. Aronoff's redirect testimony during opening arguments, the Trustees do not believe that abiding by the rules and setting an expedited briefing schedule on a proper motion on notice would delay the hearing in any way. The matter certainly does not have to be addressed tomorrow.

The need for a full record is apparent from the Plan Administrator's letter and exhibits, which distort the testimony elicited from Mr. Aronoff, both at his first deposition and during his continued examination last week, as well as the contents of his expert reports. It also misstates the discrete issues over which the Trustees have asserted attorney-client privilege and work product protection, namely: "why the trustees . . . are not pursuing certain breach claims at the estimation hearing" and Mr. Aronoff's involvement in the decision-making process. (Ex. 1, Aronoff Tr. 172:19-173:16) (emphasis added). The criteria used to streamline the pool of claims for which the Trustees are seeking estimation is an entirely separate issue – and one based on facts to which the Plan Administrator has been privy since the Protocol and which the Plan Administrator has been free to explore with the Trustees' witnesses. Nor has the Plan Administrator been precluded from exploring with Mr. Aronoff his view as to the reliability of the loan review process conducted on behalf of the Trustees during the Protocol. Indeed, the premise on which the Plan Administrator sought – and was granted – an additional deposition day with Mr. Aronoff was that "Mr. Aronoff was involved in the Trustees loan review under the Protocol" and that he "designed and implemented" "the Protocol claim submission process."

(Ex. 2, Oct. 16, 2017 Letter from T. Cosenza to Chapman, J. at 1 (quoting Aronoff Tr. at 62:12-14, 73:23-74:17).) Simply put, as the full record shows, all of the bases on which the Plan Administrator seeks to preclude Mr. Aronoff's redirect testimony are meritless and should be rejected.

First, the Plan Administrator's argument that Mr. Aronoff's redirect was "outside the scope of the cross examination at his deposition" or his reports is baseless.¹ To the contrary, the Trustees' redirect was directed to the same topics and exhibits that the Plan Administrator chose to address during its continued examination. The whole purpose of the Plan Administrator's additional deposition of Mr. Aronoff was to test his "personal involvement in the loan review process during the Protocol" and counsel for the Plan Administrator questioned Mr. Aronoff at length regarding that involvement and whether he thought that process was reliable based on his participation. (Ex. 3, Aronoff Tr. at 317:8-24.) These questions elicited testimony from Mr. Aronoff that the Trustees' process was reliable. For example:

To the extent I have in my report opined as to the reasonable, thoughtful, careful nature by which the trustees went about analyzing the loan files and reaching a decision as to whether or not there was a valid claim to be submitted under the protocol, I was there and I was involved in that decision-making process and can speak from personal experience as to the types of questions that were asked and the type of care and thought that went in to making those decisions with respect to the trustees' process.

(Ex. 3, Aronoff Tr. 318:4-12.) Addressing the opinions of the Plan Administrator's expert, Mr. Grice, in response to questions from the Plan Administrator's counsel, Mr. Aronoff testified:

What was done, as required by the protocol, was to look at every single loan for which the trustee thought they were entitled to pursue a breach claim and determine whether there were sufficient – there was sufficient information in the files, and attendant documentation, to submit a valid claim under the protocol. And to the extent there are categories of breaches that are discussed or groupings made, he doesn't seem to be able to understand that all of that information and all of that grouping and all of that summarizing was rolled up from the actual results that were discovered on a loan-by-loan review and that the information and facts for each loan and each claim are laid out specifically.

(*Id.* at 391:2-19.)

¹ Redirect examinations at deposition are not limited to the subject of direct examination. *Smith v. Logansport Community School Corp.*, 139 F.R.D. 637, 641-642 (N.D. Ind. 1991). Rather, "the examiner may ask about anything relevant to the subject matter of the action, regardless of whether it was raised on direct examination." *Id.* (quoting 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2113, at 420).

But given the enormity of the undertaking and the time that was permitted to pursue claims or lose the right to pursue those claims, there was a real attempt made to identify and put forth the clearest – the clearest, most well-supported claims, and that was – that approach was further examined and verified when I looked at the population that was the subject of my report.

Q. And when you say – when you say “looked at the population that was the subject of my report,” what do you mean by that?

A. I mean that as contrasted with – that was true for all of the claims that were presented through the protocol process, to the extent I was there, that that overriding attempt to submit only the clearest and most easily understood claims, and then to the extent I wanted to assure myself that that was true for the smaller number of loans and claims that were the subject matter of my report, I was confident that that was the case as well, that the claims that were the subject matter of my report also reflected, if you think of – if you think of the reasonable, valid claims as an archery target and you're permitted under the governing documents and custom and practice and the protocol to submit everything that is on that target, and you shouldn't be submitting anything outside the target, the attempt wasn't made to use the whole target, the attempt was made to stick with the 7, 8, 9s and 10s in the middle of that target, and to the extent something was a valid, reasonable, thoughtful claim, given the time and expense that was involved here, we tried to avoid the close calls and not waste time or jam up the process with close calls and stick with the strongest, most clearly evidenced breach findings. That was the goal.

(*Id.* at 398:4-399:24.)

The Plan Administrator's counsel also elicited testimony about criteria used to determine categories of breaches during the Protocol and to the extent applicable any additional criteria (or screens) applicable to those breach findings that are the subject of Mr. Aronoff's report. For example, the Plan Administrator's counsel questioned Mr. Aronoff about the basis for determining so-called “missing document” breaches, as counsel had done in the initial day of Mr. Aronoff's deposition; and further examined Mr. Aronoff about additional criteria – set forth in Mr. Aronoff's report – that applied to such breach claims that were the subject of Mr. Aronoff's report. The redirect examined Mr. Aronoff about the content of his report and “certain criteria that apply to the misrepresentation of income breach findings that are the subject of [his affirmative] report.” (*See* Ex. 4, Aronoff Tr. 605:25-615:23.) Not only were these criteria disclosed in Mr. Aronoff's affirmative report, but the Plan Administrator chose to begin its examination by presenting Mr. Aronoff with a copy of his affirmative report and asking about the misrepresentation Breach Findings on Table 1. (*See* Ex. 3, Aronoff Tr. at 301:7-303:6.) Later, the Plan Administrator presented Mr. Aronoff with Exhibit 4 to his affirmative report (PA 143) and elicited testimony about the “monthly percentage difference” (*i.e.*, variance) “between the misrepresented income and the actual income” used by the Trustees to support

misrepresentation of income breach findings. In short, an inspection of Mr. Aronoff's deposition transcript reveals that the Trustees' redirect was both limited to opinions disclosed by Mr. Aronoff during expert discovery and the same subject matter as explored by counsel for the Plan Administrator in his examination.

Likewise, counsel for the Plan Administrator questioned whether Mr. Aronoff was "aware of a case in which a judge specifically made a finding about a claimant's loan review process?", and Mr. Aronoff testified: "I think it is clear by Castel in MARM, that simply because a mistake is demonstrated on an individual loan or handful of loans, he is not going to read that to mean that in any way the process by which the other breach findings have been asserted and analyzed are any way infected or undermined . . . look, we know there are a handful of mistakes but that doesn't mean that there were any systemic errors." (*See* Ex. 3, Aronoff Tr. at 375:13-376:15.) In the context of that line of questioning opened up by counsel for the Plan Administrator, the Trustees' redirect presented Mr. Aronoff with a series of hypotheticals, asked him to assume various error rates, and sought testimony on whether such error rates would affect his opinion that the loan review process for Breach Findings subject to Mr. Aronoff's affirmative report was reliable. (*See* Ex. 4, Aronoff Tr. at 624:13-633:8.) Thus, here too, redirect on the impact of hypothetical error rates is entirely proper and within the contours of the direct examination.

Second, the Plan Administrator's claims that Mr. Aronoff's redirect testimony discussed evidence that the Plan Administrator had been previously denied is simply wrong. The Plan Administrator has long had the *facts* regarding the characteristics of the 15,000 dropped loans, and could have done any analysis that it needed to do to support its argument that the dropped claims reflected some sort of weakness in the Trustees' process. Indeed, the Plan Administrator concedes that Mr. Grice did just that. Moreover, the Plan Administrator has had every opportunity to question the Trustees' witnesses regarding those facts. For example, contrary to the Plan Administrator's cherry-picked, out-of-context quote from Mr. Esses, Mr. Esses actually was questioned and testified, without any instruction from counsel, about the basis for his belief that *all* of the claims submitted during the protocol were valid. (Ex. 5, Esses Tr. at 298:9-303:25.) During that line of questioning, Mr. Esses was specifically asked whether he "understand[s] that 15,000 loans that were submitted during the Protocol are now no longer at issue in the estimation proceeding" and he responds "yes" and that he "believe[s] they are all valid claims." (Ex. 5, Esses Tr. 303:8-20.) The Plan Administrator's counsel chose to drop that line of questioning for some reason. Later, when the issue of the dropped loans re-emerged, Mr. Esses testified that he had a non-privileged understanding that the loans were dropped because "Duff & Phelps was involved in the preparation of exhibits to Mr. Aronoff's expert report" and he "learned *which claims were included and not included*." (Ex. 5, Esses Tr. 349:19-23 (emphasis added).) Again, the Plan Administrator's counsel dropped the line of questioning, but what is clear from these passages is that (1) Mr. Esses had non-privileged information regarding the nature of the claims that were not included in Mr. Aronoff's report and the claims that remained in the case and (2) he believed that both sets of claims were valid.

Similarly, the only subject regarding the dropped loans that "Mr. Aronoff explicitly disclaimed knowledge of at his prior deposition" was *why* the Trustees' chose not to pursue certain breach claims at the estimation hearing and the number of breach claims (as opposed to the number of loans) not being pursued. (*See, e.g.*, Ex. 1, Aronoff Tr. at 169:20-170:16; 172:19-

173:6.) As is made clear from the copious direct testimony that the Plan Administrator elicited from Mr. Aronoff regarding his involvement in the Protocol process, Mr. Aronoff was well aware of the nature of the claims that were put forward during that process and had a long-held view concerning the reliability of the Trustees' loan review process and the breach findings generated through that review. Again, the Plan Administrator, throughout this dispute, seems laser-focused on understanding *why* the claims were dropped, rather than gathering the freely available facts regarding the claims that were dropped and the non-attorneys' views of those claims.

A ruling that will preclude the Trustees from providing this and related testimony at trial because the Plan Administrator decided that it did not want to know the basis for Messrs. Esses's and Aronoff's knowledge and beliefs would prejudice the Trustees, not the Plan Administrator.

Respectfully Submitted,

/s/ Daniel P. Goldberg

Daniel P. Goldberg

cc: All counsel (via email)

EXHIBIT 1

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 08-13555 (SCC)

5 -----x
6 IN RE

7 LEHMAN BROTHERS HOLDING, INC., et al.,
8 Debtors.
9 -----x

10 787 Seventh Avenue
11 New York, New York

12 October 6, 2017

13 9:36 a.m.

14 VIDEOTAPED DEPOSITION of JAMES H.
15 ARONOFF, taken by the Debtors, held at the
16 aforementioned time and place, before Sherri
17 Flagg, a Registered Professional Reporter,
18 Certified LiveNote Reporter, and Notary Public.

19 * * *
20
21
22
23
24
25

1 James H. Aronoff

2 mischaracterizes the record. And, two, I
3 don't know that he said that he revised
4 his opinion with respect to the number of
5 loans.

6 A. All I said is they're no longer in
7 dispute. My opinion with respect to those
8 loans hasn't changed.

9 Q. So which loans were you referring
10 to when you referenced the 30 to 34 loans that,
11 through the exchange of expert reports, have
12 been withdrawn?

13 A. Those were loans that I opined on
14 in the context of this report and it's been
15 demonstrated that the basis of my opinion with
16 respect to any particular loan was in error.
17 And to the extent there was a factual error
18 identified and it changed my -- and it changed
19 my opinion, it was withdrawn.

20 Q. Now, you understand that the
21 trustees have withdrawn a significant number of
22 the breach claims they asserted during the
23 protocol, right?

24 MR. HEALY: Objection to form,
25 mischaracterizes the record.

1 James H. Aronoff

2 A. What's the question, please?

3 (Requested portion read.)

4 A. I don't know if it's significant
5 or not. I know there are loans that have been
6 withdrawn even between the status report I
7 cited and Exhibit 1. It went from 90 to 76,
8 but I don't know if there were other iterations
9 of that.

10 Q. That's loans, correct?

11 A. That's loans.

12 Q. Okay. Do you know how many claims
13 have been withdrawn by the trustees?

14 MR. HEALY: Objection to form,
15 vague, ambiguous and confusing.

16 A. I still don't.

17 Q. Do you have any explanation you
18 can offer me here today for the withdrawal of
19 those claims?

20 THE WITNESS: Are you going to say
21 something?

22 MR. HEALY: I am going to say
23 something.

24 As you know, Mr. Davis, the
25 Exhibit G prohibits inquiry into any

1 James H. Aronoff

2 MR. DAVIS: The trustees haven't
3 rescinded breach claims?

4 MR. HEALY: I think they've
5 advised you that they are not pursuing
6 claims at the estimation hearing.

7 MR. DAVIS: Is there a difference?
8 I don't understand the difference.

9 MR. HEALY: I'm not going to argue
10 with you. I'm just telling you the
11 language which was used to communicate it
12 to you. You're conducting the
13 examination. I'm interposing an
14 objection on the grounds that your
15 question is inaccurate as framed.

16 BY MR. DAVIS (continuing):

17 Q. Okay, let me ask the question
18 then.

19 Just yes/no: Do you know why the
20 trustees have advised the Plan Administrator
21 that they are not pursuing certain breach
22 claims at the estimation hearing?

23 MR. HEALY: I'm prepared to let
24 him answer that question subject to an
25 agreement that his answering the question

1 James H. Aronoff

2 will not be asserted to be a waiver of
3 any applicable privilege or protection
4 under Exhibit G.

5 MR. DAVIS: That's fine.

6 A. No.

7 Q. So you were not involved in the
8 decision-making process concerning the
9 trustees' decision to not pursue certain breach
10 claims at the estimation hearing?

11 MR. HEALY: He's advised you that
12 he does not know, and you are now asking
13 him to testify as to discussions that he
14 may have had with the trustees' counsel,
15 consulting experts or others. And he's
16 instructed not to answer that question.

17 Q. Was it important to the opinion
18 that you're giving in this case to understand
19 the basis for the trustees' decision not to
20 pursue certain of the breach claims in this
21 case?

22 A. No.

23 MR. HEALY: You beat me to it.

24 THE WITNESS: Sorry.

25 MR. HEALY: That's okay, go ahead.

EXHIBIT 2

WILLKIE FARR & GALLAGHER LLP

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October 16, 2017

VIA EMAIL AND ECF

The Honorable Shelley C. Chapman
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10014

Re: *In re Lehman Brothers Holdings Inc., et al., Ch. 11 Case No. 08-13555 (SCC)*

Dear Judge Chapman:

I am counsel to Lehman Brothers Holdings Inc. ("Lehman" or the "Plan Administrator"). I write to respectfully seek the Court's resolution of a dispute arising from the Trustees' refusal to make their primary expert and fact witness, Mr. James Aronoff, available for more than a single day of deposition. The Trustees have designated Mr. Aronoff as an expert witness who will opine on most aspects of their case, including the validity of the breach claims that the Trustees submitted through the Protocol process. At the same time, Mr. Aronoff has asserted that he was the "boss" of the "team that directed and oversaw the [Trustees'] forensic loan review" during the Protocol. (Deposition of James Aronoff, Tr. at 63:5-12 (selections attached as Exhibit A); Aronoff Opening Report at 2.) In short, while the Trustees have elected to select Mr. Aronoff as an expert witness in connection with the upcoming Estimation Proceeding, he is also a key fact witness on the subject of the Proceeding -- the validity and valuation of the breach claims that the Trustees submitted to the Protocol. Because Mr. Aronoff is both a fact and expert witness, the Plan Administrator is entitled to two days of deposition. The Trustees disagree. (See Exhibits B, C.)

The Trustees first retained Mr. Aronoff and Duff & Phelps in May 2013 to manage the review of a sample of loans. (Aronoff Opening Report at 11; Aronoff Tr. at 59:25-60:14.) After testifying at the hearing that led to the establishment of the Protocol, Mr. Aronoff was involved in the Trustees loan review under the Protocol. (Aronoff Tr. at 60:15-30.) Although Mr. Aronoff left Duff & Phelps in December 2015, after this estimation proceeding began, the Trustees reengaged him in February 2017 to review and opine on the very Protocol claim submission process that he "designed and implemented." (Aronoff Tr. at 62:12-14, 73:23-74:17.)

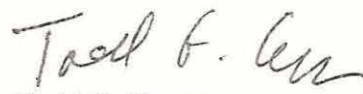
In his report, Mr. Aronoff disclosed that he was “a member of the team that directed and oversaw the forensic loan review” during the Protocol. (Aronoff Opening Report at 2.) He explained that his role was to provide “input into the identification of the Loan Review Firms . . . and the policies to be used to identify and support the Breach Findings during the review process. . . .” (Aronoff Opening Report at 3.) Mr. Esses testified that Mr. Aronoff was the person who, among other things, determined whether the breaches found by the Loan Review Firms retained by the Trustees had a material and adverse effect on the value of the loans, and made the final decision on whether to submit Breach Claims to the Plan Administrator. (Deposition of Edmund Esses (attached as Exhibit D), Tr. at 69:24-70:5, 114:19-24; 249:25-250:12, 262:23-263:2.) Mr. Aronoff testified that he was “responsible for the scope [of the protocol] and was responsible for making sure that there was an understanding among the loan review firms and Duff & Phelps with [respect to] the [loan review] exercise.” (Aronoff Tr. at 86:24-87:9.) He also “provide[d] . . . oversight and guidance as to . . . whether or not a particular fact pattern was, in fact, a breach finding” (Aronoff Tr. at 85:10-22.)

In advance of the first day of Mr. Aronoff’s deposition, the Plan Administrator requested additional time to depose Mr. Aronoff as a fact witness, based on the testimony of Mr. Esses discussed above. The Trustees denied this request. (See Exhibit D.) As expected, given that the Plan Administrator was limited to seven hours of tape time for Mr. Aronoff on October 6, it was unable to cover both the substance of the nearly 200 pages of Mr. Aronoff’s expert reports and the full extent of his central role in the Protocol process that led to those expert reports. Therefore, the Plan Administrator requested that the Trustees make Mr. Aronoff available for a second day of deposition. (Aronoff Tr. at 279:11-280:21.) After first suggesting on the day of Mr. Aronoff’s deposition that the Trustees might be willing to entertain the possibility of additional time, the following business day, the Trustees conditioned any further consideration of the request on the Plan Administrator’s willingness to identify the topics that would be covered in any potential further deposition. (See Exhibit C.)

As I discussed, Mr. Aronoff is both a critical fact witness and an expert witness. Under Exhibit G, the Plan Administrator is entitled to take a deposition of each witness the Trustees intend to call at the hearing and additional fact depositions of the Trustees’ witnesses, and there is no requirement that the Plan Administrator provide an outline of its questioning in advance of such depositions. The Trustees’ decision to retain Mr. Aronoff as an expert in this case does not insulate him from being deposed as a fact witness regarding matters that are highly relevant to the matters to be tried at the Estimation Proceeding. The Plan Administrator therefore is entitled to a second day of deposition testimony from Mr. Aronoff.

The Plan Administrator respectfully requests that the Court order the Trustees to produce Mr. Aronoff for an additional day of deposition.

Sincerely,



Todd G. Cosenza

cc: All counsel (via email)

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (SCC)

-----x
IN RE
LEHMAN BROTHERS HOLDING, INC., et al.,
Debtors.

-----x
787 Seventh Avenue
New York, New York

October 6, 2017

9:36 a.m.

VIDEOTAPED DEPOSITION of JAMES H.
ARONOFF, taken by the Debtors, held at the
aforementioned time and place, before Sherri
Flagg, a Registered Professional Reporter,
Certified LiveNote Reporter, and Notary Public.

* * *

<p style="text-align: right;">Page 58</p> <p>1 James H. Aronoff</p> <p>2 of certain issuers of residential mortgage-</p> <p>3 backed securities.</p> <p>4 Q. Okay. Is it all right if we refer</p> <p>5 to that as "the protocol"?</p> <p>6 MR. HEALY: Objection to form.</p> <p>7 The order is an order. Do you mean it</p> <p>8 would include both the order and the</p> <p>9 document attached with it --</p> <p>10 MR. DAVIS: Fair enough.</p> <p>11 MR. HEALY: -- when you use the</p> <p>12 term "protocol"?</p> <p>13 MR. DAVIS: Fair enough.</p> <p>14 BY MR. DAVIS (continuing):</p> <p>15 Q. If you turn back to page, I guess,</p> <p>16 7 of 24, there is an attachment to this order.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And the attachment is labeled RMBS</p> <p>20 Claim Protocol. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is this attachment a document you</p> <p>23 have seen before?</p> <p>24 A. It appears to be something I</p> <p>25 reviewed in advance of my report, yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 James H. Aronoff</p> <p>2 entered in late December of 2014; is that</p> <p>3 right?</p> <p>4 A. That appears to jibe with the</p> <p>5 entered date at the top of the page I'm looking</p> <p>6 at.</p> <p>7 Q. And the trustees retained Duff &</p> <p>8 Phelps to manage the trustees' loan review</p> <p>9 under the protocol; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. At that time in December of 2014,</p> <p>12 you were a managing director at Duff & Phelps;</p> <p>13 is that right?</p> <p>14 A. That's correct.</p> <p>15 Q. And you remained at Duff & Phelps</p> <p>16 through December of 2015; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Did you join Baker Tilly</p> <p>19 immediately after leaving Duff & Phelps?</p> <p>20 A. January 4th, 2016.</p> <p>21 Q. Did you continue to work on the</p> <p>22 protocol when you joined Baker Tilly?</p> <p>23 A. I'm not sure I understand the</p> <p>24 question.</p> <p>25 Q. Did you continue to work on</p>
<p style="text-align: right;">Page 59</p> <p>1 James H. Aronoff</p> <p>2 Q. Okay. Now, you mentioned you</p> <p>3 reviewed drafts of this as well?</p> <p>4 A. Way back, way back when, when I</p> <p>5 was in the early stages of the development of</p> <p>6 this document. I thought that's what you were</p> <p>7 referring to. I've seen the final protocol.</p> <p>8 Q. Okay. For what purpose were you</p> <p>9 reviewing drafts of this?</p> <p>10 MR. HEALY: I'm going to just</p> <p>11 caution Mr. Aronoff that to the extent</p> <p>12 that you are being asked to disclose the</p> <p>13 content of privileged communications with</p> <p>14 the trustee counsel, you should not</p> <p>15 respond to the question. And if we need</p> <p>16 to, we'll step out and discuss the</p> <p>17 issues.</p> <p>18 THE WITNESS: Can I hear the</p> <p>19 question again, please.</p> <p>20 (Requested portion read.)</p> <p>21 A. As part of the team at Duff</p> <p>22 working on this engagement, I was engaged by</p> <p>23 counsel for the trustees to review the</p> <p>24 document.</p> <p>25 Q. Okay. So the final protocol was</p>	<p style="text-align: right;">Page 61</p> <p>1 James H. Aronoff</p> <p>2 supervision or -- strike that.</p> <p>3 Did you continue to work on</p> <p>4 managing the trustees' loan review under the</p> <p>5 protocol when you moved to Baker Tilly in</p> <p>6 January of 2016?</p> <p>7 A. No.</p> <p>8 Q. Why did you leave Duff & Phelps?</p> <p>9 MR. HEALY: Objection to form.</p> <p>10 A. Because I had an opportunity to be</p> <p>11 a partner at Baker Tilly and I wanted to be</p> <p>12 part of a professional partnership.</p> <p>13 Q. Did anyone else, any of your</p> <p>14 colleagues from Duff & Phelps, move to Baker</p> <p>15 Tilly at or around that time with you?</p> <p>16 A. No.</p> <p>17 Q. Did anyone else from Duff & Phelps</p> <p>18 move to Baker Tilly later on?</p> <p>19 A. Yes.</p> <p>20 Q. And which of your colleagues moved</p> <p>21 from Duff & Phelps to Baker Tilly?</p> <p>22 A. Richard Sauerwein.</p> <p>23 Q. How do you spell that last name?</p> <p>24 A. S-A-U-E-R-W-E-I-N.</p> <p>25 Q. Anyone else?</p>

<p style="text-align: right;">Page 62</p> <p>1 James H. Aronoff</p> <p>2 A. Charlie Campbell, C-A-M-P-B-E-L-L.</p> <p>3 Q. Anyone else?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. Were -- was Mr. Sauerwein working</p> <p>6 on the engagement connected with the protocol</p> <p>7 review while with you at Duff & Phelps?</p> <p>8 A. Yes.</p> <p>9 Q. Was Mr. Campbell working on that</p> <p>10 engagement with you at Duff & Phelps?</p> <p>11 A. Yes.</p> <p>12 Q. At some point after you joined</p> <p>13 Baker Tilly, were you engaged by the lawyers</p> <p>14 for the trustees in connection with this</p> <p>15 estimation proceeding?</p> <p>16 A. Yes.</p> <p>17 Q. When were you engaged?</p> <p>18 A. I believe somewhere around</p> <p>19 February of 2017.</p> <p>20 Q. And what was the scope of the</p> <p>21 engagement when you were engaged in February</p> <p>22 2017?</p> <p>23 A. It was to provide the opinions</p> <p>24 that appear in my affirmative report.</p> <p>25 Q. Between January of 2016 and</p>	<p style="text-align: right;">Page 64</p> <p>1 James H. Aronoff</p> <p>2 Q. What was the subject matter you</p> <p>3 were responsible for?</p> <p>4 A. It was the substance and -- the</p> <p>5 substantive aspects of the forensic loan</p> <p>6 reviews that were to be conducted under the</p> <p>7 protocol.</p> <p>8 Q. And that included both the breach</p> <p>9 findings and the determination whether those</p> <p>10 breach findings adversely and materially</p> <p>11 affected the value of the loan?</p> <p>12 MR. HEALY: Objection to form.</p> <p>13 A. Yes, among other things.</p> <p>14 Q. Okay. What were the other things?</p> <p>15 A. Well, one that comes to mind is</p> <p>16 the sufficiency or the use, the appropriate use</p> <p>17 of any particular form of supporting</p> <p>18 information or documentation as a basis for the</p> <p>19 identification of a breach finding, as well as</p> <p>20 getting involved in the interpretation of</p> <p>21 various information sources, breach findings,</p> <p>22 scope of the reps and warranties that were</p> <p>23 mapped to those breach findings and the like.</p> <p>24 Q. Can I just ask you to take a quick</p> <p>25 look at your rebuttal report, which is marked</p>
<p style="text-align: right;">Page 63</p> <p>1 James H. Aronoff</p> <p>2 February of 2017, did you do any work in</p> <p>3 connection with the Lehman bankruptcy?</p> <p>4 A. No.</p> <p>5 Q. Okay. Now, back to December of</p> <p>6 2014 after the protocol was issued, at that</p> <p>7 time you were a senior member of the team</p> <p>8 responsible for managing the trustees' loan</p> <p>9 review; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. What do you mean by senior member?</p> <p>12 A. I was the boss.</p> <p>13 Q. Who was on the team?</p> <p>14 A. I call my lieutenants -- my senior</p> <p>15 professionals were Mr. Sauerwein and</p> <p>16 Mr. Campbell, who I just -- and then there were</p> <p>17 a number of other people that would be involved</p> <p>18 in my work stream as well as other work</p> <p>19 streams, like Mr. Esses, some analysts, some</p> <p>20 other people that were part of the team.</p> <p>21 But to the -- and to the extent --</p> <p>22 to the extent the subject -- to the extent they</p> <p>23 were working on matters or activities related</p> <p>24 to the subject matter I was responsible for, I</p> <p>25 considered them to be on my team.</p>	<p style="text-align: right;">Page 65</p> <p>1 James H. Aronoff</p> <p>2 as Exhibit 68, on page 35, paragraph 57.</p> <p>3 A. I'm sorry, what paragraph?</p> <p>4 Q. It's paragraph 57. It's a long</p> <p>5 paragraph. It actually begins on page 34.</p> <p>6 A. Paragraph 57?</p> <p>7 Q. Yeah. This paragraph, in kind of</p> <p>8 the middle on page 35, it references two senior</p> <p>9 Duff & Phelps professionals responsible for the</p> <p>10 final review and submission of claims during</p> <p>11 the protocol. Do you see that?</p> <p>12 A. I don't yet.</p> <p>13 Q. Okay.</p> <p>14 A. I see that.</p> <p>15 Q. All right. And I just want to</p> <p>16 confirm: Who are those two senior Duff &</p> <p>17 Phelps professionals you were referring to?</p> <p>18 A. I was referring to Campbell and</p> <p>19 Sauerwein on there.</p> <p>20 Q. And they were working under your</p> <p>21 direction at the time?</p> <p>22 A. I'm sorry, what time?</p> <p>23 Q. Up until you left Duff & Phelps.</p> <p>24 A. That's correct.</p> <p>25 Q. Now, if you look at your opening</p>

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2 report again?
3 A. In this hearing?
4 Q. In Exhibit 67. Exhibit 67, page
5 8. This section is entitled Familiarity and
6 Role in the Trustees' Review and Analysis
7 Pursuant to the Protocol. Do you see that?
8 A. Yes.
9 Q. Okay. And right in the beginning
10 there, in the second sentence, you say that you
11 (as read):
12 ...had input into the
13 identification of the loan review firms
14 retained to conduct the initial loan file
15 review and the policies to be used to
16 identify and support the breach findings
17 during the review process, such as the
18 evidentiary sources to be used to
19 determine whether breaches existed.
20 Do you see that?
21 A. Yes.
22 Q. Okay. What do you mean by
23 "input"?
24 A. I was part of the team that
25 determined if the loan review firms that were

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2 going to be engaged and on which, at that time,
3 I believed I was going to use their information
4 and their findings to offer opinions. So I was
5 part of the team that determined the
6 suitability and the appropriateness of
7 retaining the specific firms that were
8 retained, from my perspective.
9 For example, others might look at
10 their technological capabilities in terms of
11 producing reports or might analyze the systems
12 they used. But in terms of the quality and
13 experience of the personnel, their familiarity
14 and understanding of what this exercise was,
15 and just a basic understanding that they saw
16 the world the same way I did in terms of having
17 a common understanding of what the exercise
18 [sic] were and what a breach is, I was part of
19 the team that identified the loan review firms.
20 Q. Okay. Other than Duff & Phelps
21 employees, who else was on that team?
22 MR. HEALY: Objection to form.
23 A. The trustees and trustees'
24 counsel. As I note in here, some of the
25 initial recommendations for firms to retain

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2 came out of relationships that one or more
3 trustees might have had with a firm, in
4 addition to relationships and information about
5 those firms we might have had internally at
6 Duff & Phelps.
7 Q. Do you know who made the final
8 decision about which firms to select?
9 A. I don't.
10 Q. So we've been talking about the
11 first half of that sentence. There's a second
12 half of the sentence, too, which speaks of the
13 policies to be used to identify and support the
14 breach findings during the review process. Do
15 you see that?
16 MR. HEALY: Objection to form.
17 A. Yes.
18 Q. And did you also have input into
19 those policies?
20 A. To the extent those policies were
21 Duff-generated or information that Duff was
22 providing to the firms, yes. And to the extent
23 we were evaluating--we, Duff--were evaluating
24 the policies in place at the existing firm, I
25 would have been involved in evaluating whether

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2 they were doing things in a way that we felt
3 was consistent with our view of industry custom
4 and practice.
5 Q. Did Duff & Phelps provide the loan
6 review firms with the policies they were to use
7 in order to identify and support the breach
8 findings?
9 A. In part.
10 Q. Okay. Which part did they
11 provide? Sorry, which part did Duff & Phelps
12 provide?
13 A. Duff & Phelps provided guidance
14 and input during the process to the extent
15 there was any--"concern's" too strong a
16 word--to the extent there was any indication
17 that there may have been a misunderstanding or
18 a miscommunication between what was being
19 submitted to Duff & Phelps and what the firm
20 intended to communicate to Duff & Phelps.
21 So there was a constant iterative
22 process where certain definitions about the way
23 certain things should be treated was going on.
24 But in terms of -- the firms that
25 were hired were all very experienced forensic

<p style="text-align: right;">Page 70</p> <p>1 James H. Aronoff</p> <p>2 loan review firms and, for the most part, the</p> <p>3 due diligence that was conducted around these</p> <p>4 firms assured us, assured me as -- from my</p> <p>5 perspective--I can't speak for anyone else--</p> <p>6 that they knew what they were doing and they</p> <p>7 knew how to conduct loan reviews.</p> <p>8 And so it wasn't as if Duff &</p> <p>9 Phelps gave them a policies and procedures or</p> <p>10 instruction manual and told me how to run their</p> <p>11 loan reviews.</p> <p>12 Q. Okay. So Duff & Phelps did not</p> <p>13 give them a written set of policies and</p> <p>14 procedures pursuant to which they would</p> <p>15 identify and support the breach findings?</p> <p>16 MR. HEALY: Objection, form,</p> <p>17 foundation.</p> <p>18 A. What was the last part of the</p> <p>19 question? I'm sorry.</p> <p>20 Q. Let me restate the question.</p> <p>21 So Duff & Phelps did not provide</p> <p>22 the loan review firms with a written set of</p> <p>23 policies and procedures pursuant to which those</p> <p>24 firms would identify and support the breach</p> <p>25 findings under the protocol, correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 James H. Aronoff</p> <p>2 review.</p> <p>3 Q. So what were you referencing in</p> <p>4 this paragraph on page 8 of your opening report</p> <p>5 when you used the term "policies to be used to</p> <p>6 identify and support the breach findings"?</p> <p>7 A. That's in connection with the</p> <p>8 identification of the loan review firms. As I</p> <p>9 said, the firms that were ultimately selected,</p> <p>10 we had a high comfort level with.</p> <p>11 But before that determination was</p> <p>12 made, we needed to make sure that they, in</p> <p>13 fact, did have their own understanding. And</p> <p>14 we -- to the extent they had written policies</p> <p>15 and work flows or a system that captured data,</p> <p>16 we analyzed that to make sure that, in fact,</p> <p>17 they -- as I said, they were looking at the</p> <p>18 world in the same way that we understood these</p> <p>19 reviews would be conducted. And if we had</p> <p>20 3,000 people, we'd conduct them ourselves.</p> <p>21 Q. So the policies you're referring</p> <p>22 to here are the policies of each of the</p> <p>23 individual loan review firms?</p> <p>24 MR. HEALY: Objection, misstates</p> <p>25 his testimony, form.</p>
<p style="text-align: right;">Page 71</p> <p>1 James H. Aronoff</p> <p>2 MR. HEALY: Same objection.</p> <p>3 A. From a substantive standpoint, not</p> <p>4 to my knowledge. The distinction I'm making is</p> <p>5 there was a great deal of information that was</p> <p>6 exchanged with the firms to drive conformity of</p> <p>7 results.</p> <p>8 So in terms of forms of reports,</p> <p>9 forms of narratives, agreement about labels of</p> <p>10 how certain things would be described, there</p> <p>11 was a great deal of specific instruction, and</p> <p>12 chastising to those that didn't follow it, to</p> <p>13 make sure that the information was provided in</p> <p>14 a form that would allow us to do -- engage in</p> <p>15 the next step of the process.</p> <p>16 Q. But just to make sure I</p> <p>17 understand, what do you mean from a substantive</p> <p>18 standpoint they were not provided with written</p> <p>19 policies?</p> <p>20 A. I didn't feel the need to</p> <p>21 communicate to any of the firms what a</p> <p>22 misrepresentation of income was, how to read a</p> <p>23 1003. We didn't hire firms that didn't have a</p> <p>24 very high level of experience and expertise in</p> <p>25 understanding how to conduct a forensic loan</p>	<p style="text-align: right;">Page 73</p> <p>1 James H. Aronoff</p> <p>2 A. Yes, but not exclusively. As I</p> <p>3 said before, there was -- there were what I</p> <p>4 would call policy or subject matter discussions</p> <p>5 that were conducted with the firms on an</p> <p>6 ongoing basis. So I'm referring to both of</p> <p>7 those things in this sentence.</p> <p>8 Q. Okay. But there was no</p> <p>9 standardized set of written guidelines issued</p> <p>10 to the loan review firms?</p> <p>11 A. No.</p> <p>12 MR. HEALY: Objection to form.</p> <p>13 MR. DAVIS: Let me just finish the</p> <p>14 question.</p> <p>15 Q. There was no standardized set of</p> <p>16 written guidelines issued to the loan review</p> <p>17 firms by which they would be instructed to</p> <p>18 identify and support the breach findings; is</p> <p>19 that right?</p> <p>20 MR. HEALY: Objection to form.</p> <p>21 A. Not that I recall.</p> <p>22 Q. Is it fair to say that you had</p> <p>23 significant input into the design and</p> <p>24 implementation of the trustees' loan review</p> <p>25 during the protocol?</p>

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1 James H. Aronoff
2 A. More earlier on than later on. I
3 think it was always significant. It's just --
4 if you mean significant by the amount of time I
5 spent, the amount of time I was called in, as
6 opposed to issues being handled by my
7 lieutenants, decreased as we started to get
8 into a rhythm with -- and an understanding with
9 the loan review firms of how this process would
10 be undertaken.
11 Q. Okay. But right now I'm focusing
12 on design and implementation of the trustees'
13 loan review during the protocol. So at least
14 with respect to the design of the trustees'
15 loan review during the protocol, is it fair to
16 say you had significant input into that?
17 A. Yes.
18 Q. Okay. If you'd turn to page 12 of
19 your opening report, at the top of the page it
20 says "After the protocol was established, Duff
21 & Phelps, on behalf of the trustees, worked
22 to" -- and then there's a list of items. Do
23 you see that?
24 A. Yes.
25 Q. Okay. The first is collect the

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1 James H. Aronoff
2 loan files. How many loan files were
3 collected; do you know?
4 A. No.
5 Q. Do you have any idea of order of
6 magnitude?
7 A. No.
8 Q. Were you -- you were supervising
9 this process?
10 A. No.
11 Q. Okay. Who was supervising the
12 process of collection of the loan files?
13 A. I believe it was Edmond Esses and
14 one of the attorneys for the trustees.
15 Q. Do you have any sense of the
16 volume of records that was ultimately
17 assembled?
18 A. Massive.
19 Q. And how were the files maintained?
20 MR. HEALY: Objection to form,
21 vague and ambiguous.
22 Q. How were the loan files
23 maintained?
24 A. I don't know how to answer that
25 question. I don't know by who or when or...

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1 James H. Aronoff
2 Q. Okay. Do you know by whom they
3 were maintained?
4 A. No.
5 MR. HEALY: Objection to form,
6 vague and ambiguous.
7 Q. Sitting here today, do you have
8 access personally to all of the loan files at
9 issue in the case?
10 MR. HEALY: Sitting in the witness
11 chair in this conference room?
12 Q. Do you understand what I mean?
13 A. I thought that's -- that's how I
14 understood it.
15 Q. Fair enough, okay.
16 When you go back to your office or
17 at any point in time today, would you have
18 access to all of the loan files that are at
19 issue in this case?
20 MR. HEALY: Objection to form,
21 vague and ambiguous.
22 MR. DAVIS: I'll withdraw it.
23 Q. While you were working on your
24 reports in this case, did you have access to
25 all of the loan files that are at issue in this

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1 James H. Aronoff
2 case?
3 MR. HEALY: Same objection.
4 A. I had access to the loan files for
5 the mortgage loans that were the subject of my
6 opinion.
7 Q. And how did you have access to
8 them?
9 A. Through a database system.
10 Q. What database system is that?
11 A. I believe we called it Relativity.
12 Q. And who maintained -- who
13 maintains the Relativity database system?
14 A. I believe it's Relativity.
15 Q. Okay. What do you need to do if
16 you need to search Relativity for a loan file?
17 A. You asked if I had access. You
18 log in and review.
19 Q. Have you logged in and reviewed
20 loan files on Relativity yourself?
21 A. Infrequently.
22 Q. Okay. But you understand how to
23 log into Relativity?
24 A. My team does.
25 Q. Okay. So you don't personally log

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1 James H. Aronoff
2 frequently, if at all, in terms of the -- in
3 terms of the loans or that -- that did
4 essentially the same thing as one of these
5 better-known companies, though the example that
6 comes to mind is, I think, in maybe one or two
7 breach findings, Salary.com was used instead of
8 BLS. But it was such a small incident of
9 occurrences across the 76,000 breach findings
10 that it wasn't -- it didn't raise to the level
11 of being described in this section.
12 But if that source was used, it
13 would have been described in the related breach
14 narrative and would have given the Plan
15 Administrator the opportunity to appropriately
16 question or rebut that claim based on that
17 included-but-not-limited-to source.
18 Q. Okay. But did Duff & Phelps
19 provide the loan review firms with a list of
20 third-party sources they were permitted to use?
21 A. Not to my knowledge.
22 Q. Okay. What determined when a
23 third-party source would be consulted in
24 connection with a loan review?
25 MR. HEALY: Objection to form.

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1 James H. Aronoff
2 A. To the extent an underwriter at
3 the loan review firm was trying to establish
4 whether or not there was a deficiency or defect
5 of a certain type, they would rely on other
6 information outside of the file to verify
7 whether or not the information retained in the
8 file was accurate.
9 Q. Did the loan review firms review
10 third-party sources for every loan file?
11 A. I don't know.
12 Q. What did the loan review -- what
13 did the loan review firms do with information
14 they collected from third-party loan sources?
15 Excuse me.
16 What did the loan review firms do
17 with third-party information they collected
18 from third-party sources?
19 MR. HEALY: Objection to form.
20 Q. If you know?
21 MR. HEALY: Vague, assumes facts,
22 ambiguous.
23 A. The only time I would know what
24 they did with it is if they used that
25 information to support a breach claim. What

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1 James H. Aronoff
2 they did with it in those cases where the
3 information in the file was accurate or they
4 didn't feel the third-party tool provided them
5 with a necessary clarity of decisioning that
6 they needed, I don't know what they did with
7 those.
8 Q. So there wasn't any policy or
9 procedure in place that required the loan
10 review firms to give Duff & Phelps all of the
11 information they gathered from third-party
12 sources in connection with any given loan; is
13 that right?
14 A. That's my recollection, yes.
15 Q. Did Duff & Phelps ever collect
16 information itself from third-party sources in
17 connection with this loan review process?
18 MR. HEALY: Objection, overbroad.
19 A. I don't believe so.
20 Q. So can you tell me whether all of
21 the third-party materials collected by the loan
22 review firms for a loan with a breach finding
23 was included in the loan file that was
24 transmitted to the Plan Administrator in the
25 protocol?

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1 James H. Aronoff
2 MR. HEALY: Objection to form,
3 compound, vague and ambiguous, may
4 misassume facts.
5 A. Can I hear the question again,
6 please.
7 (Requested portion read.)
8 A. I can't. But it shouldn't have
9 been that way.
10 Q. What was your role in determining
11 which claims would be sent to the Plan
12 Administrator under the protocol?
13 A. Are we running into tape -- okay.
14 My role would primarily have been
15 to provide kind of oversight and guidance as to
16 the necessary support and whether or not a
17 particular fact pattern was, in fact, a breach
18 finding of the type that we intended to submit.
19 In the very rare case, either
20 Charlie or Rich and I would sit down and talk
21 about a particular loan or groups of loans with
22 similar issues.
23 Q. Who made the final decision on
24 whether a particular breach finding materially
25 and adversely affected the value of the loan?

<p style="text-align: right;">Page 86</p> <p>1 James H. Aronoff</p> <p>2 A. I did, up until the time I left.</p> <p>3 Q. And I was going to ask you: Do</p> <p>4 you know who took over that responsibility</p> <p>5 after you left?</p> <p>6 A. I believe -- my understanding is</p> <p>7 is that there was a sufficiently large number</p> <p>8 of every type of breach finding, and that the</p> <p>9 materiality statements that I had used for</p> <p>10 those types of findings and fact patterns were</p> <p>11 used. As to what individual took ownership of</p> <p>12 that decision or not, I'm not sure. I have an</p> <p>13 idea but I'd be speculating.</p> <p>14 MR. DAVIS: Okay. I think we have</p> <p>15 to break for a minute to change the tape.</p> <p>16 VIDEO TECHNICIAN: The time is</p> <p>17 11:46 a.m. This is the end of Video 1.</p> <p>18 We're off the record.</p> <p>19 (Recess taken.)</p> <p>20 VIDEO TECHNICIAN: The time is</p> <p>21 11:58 a.m. We're back on the record.</p> <p>22 This is Video 2.</p> <p>23 BY MR. DAVIS (continuing):</p> <p>24 Q. So, Mr. Aronoff, as we've already</p> <p>25 discussed, you were involved in designing the</p>	<p style="text-align: right;">Page 88</p> <p>1 James H. Aronoff</p> <p>2 described as breach findings. And in that</p> <p>3 respect, every breach finding would be mapped</p> <p>4 or related to one or more reps and warranties.</p> <p>5 Q. And is there a document that you</p> <p>6 maintain that constitutes this map?</p> <p>7 A. I am fairly certain that --</p> <p>8 there's no one map but I'm fairly certain that</p> <p>9 with respect to the loans that were being</p> <p>10 reviewed by any individual loan review firm,</p> <p>11 they were provided with the appropriate maps</p> <p>12 relating to the trusts in which the loans they</p> <p>13 were reviewing were contained.</p> <p>14 (Exhibit 75: Excerpt from</p> <p>15 transcript of testimony of Mr. Aronoff</p> <p>16 December 10, 2014, was marked for</p> <p>17 identification.)</p> <p>18 BY MR. DAVIS (continuing):</p> <p>19 Q. So, Mr. Aronoff, the court</p> <p>20 reporter has marked as Exhibit 75 a transcript,</p> <p>21 an excerpt from a transcript of testimony dated</p> <p>22 December 12th, 2014. And I would ask you to</p> <p>23 turn to page 196.</p> <p>24 A. Well, that's the first page.</p> <p>25 Q. The first page.</p>
<p style="text-align: right;">Page 87</p> <p>1 James H. Aronoff</p> <p>2 trustees' review during the protocol; is that</p> <p>3 right?</p> <p>4 MR. HEALY: Objection to form,</p> <p>5 asked and answered.</p> <p>6 A. I was responsible for the scope</p> <p>7 and was responsible for making sure that there</p> <p>8 was an understanding among the loan review</p> <p>9 firms and Duff & Phelps with the exercise.</p> <p>10 Q. And were you involved in the</p> <p>11 mapping of representations and warranties?</p> <p>12 A. From a substantive standpoint,</p> <p>13 yes.</p> <p>14 Q. And what do you understand mapping</p> <p>15 of representations and warranties to be?</p> <p>16 A. When I talk about mapping of</p> <p>17 representation and warranties, you talk about</p> <p>18 certain deficiencies or defects that would</p> <p>19 result in a breach of a particular rep and</p> <p>20 warranty and would typically be identified as</p> <p>21 one of a certain kind of breach finding.</p> <p>22 So for every rep and warranty,</p> <p>23 there were -- there could be certain fact</p> <p>24 patterns, defects, deficiencies with respect to</p> <p>25 a loan; and those types of deficiencies were</p>	<p style="text-align: right;">Page 89</p> <p>1 James H. Aronoff</p> <p>2 This, I believe, is a transcript</p> <p>3 of your testimony in the Bankruptcy Court back</p> <p>4 in March of 2015 concerning the subject of your</p> <p>5 declarations from 2014 that we spoke about</p> <p>6 earlier. Is that right?</p> <p>7 MR. HEALY: Objection.</p> <p>8 Q. Excuse me, that's true. I'm</p> <p>9 sorry. This testimony was from December of</p> <p>10 2014, actually, December 10th, 2014 --</p> <p>11 MR. HEALY: Is there a question?</p> <p>12 Q. -- if you look at the front. Do</p> <p>13 you recall testifying in December of 2014 in</p> <p>14 Bankruptcy Court?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Would you turn to page 213.</p> <p>17 Do you remember who was examining you at this</p> <p>18 time in Bankruptcy Court?</p> <p>19 A. No.</p> <p>20 Q. I believe it was Mr. Munno. Does</p> <p>21 that refresh your recollection?</p> <p>22 A. Is there a question?</p> <p>23 Q. Yeah. Do you recall whether it</p> <p>24 was Mr. Munno who was examining you in</p> <p>25 Bankruptcy Court?</p>

<p style="text-align: right;">Page 278</p> <p>1 James H. Aronoff</p> <p>2 Q. How about a borrower whose title</p> <p>3 on the application was psychiatrist assistant</p> <p>4 but whose actual title was medical assistant.</p> <p>5 A. What about that?</p> <p>6 Q. Again, would that be sufficient to</p> <p>7 support a breach claim for misstatement of</p> <p>8 employment?</p> <p>9 MR. HEALY: Objection, incomplete</p> <p>10 hypothetical.</p> <p>11 Q. Again, assuming that there were no</p> <p>12 other problems with the recitation of the</p> <p>13 borrower's employment besides that?</p> <p>14 MR. HEALY: Same objection.</p> <p>15 A. But it's not always a matter of</p> <p>16 whether there are other problems; it's a matter</p> <p>17 of looking at who the borrower might be based</p> <p>18 on other information they provided on the</p> <p>19 application to determine, one, whether that's a</p> <p>20 difference that makes a difference and, two, to</p> <p>21 look at other things, other facts regarding the</p> <p>22 borrower that may lead to a reasonable</p> <p>23 conclusion that the job title they stated is</p> <p>24 overstating what their title really is.</p> <p>25 Personally, based just on hearing</p>	<p style="text-align: right;">Page 280</p> <p>1 James H. Aronoff</p> <p>2 And we are entitled to depose fact</p> <p>3 witnesses under our Exhibit G and the</p> <p>4 process by which we've been abiding. And</p> <p>5 so it's our position that we should have</p> <p>6 a second day with Mr. Aronoff so that I</p> <p>7 can finish this examination.</p> <p>8 MR. HEALY: Our position is that</p> <p>9 the deposition that was scheduled and</p> <p>10 agreed to, which was for a day, has been</p> <p>11 concluded.</p> <p>12 I've told you that we're willing</p> <p>13 to discuss your request for more time,</p> <p>14 but the deposition that we had set is</p> <p>15 done and you've had your seven hours.</p> <p>16 And, you know, if you feel you're in the</p> <p>17 middle of something and you need five</p> <p>18 minutes to ask two questions to complete</p> <p>19 it, I'm, you know, happy to entertain</p> <p>20 that. But I think otherwise this</p> <p>21 deposition is ended.</p> <p>22 I have a handful of cross-</p> <p>23 examination questions that I intend to</p> <p>24 ask so that we're finished. And I think</p> <p>25 that's where we are and we can pick up a</p>
<p style="text-align: right;">Page 279</p> <p>1 James H. Aronoff</p> <p>2 those two titles, I don't know what a</p> <p>3 meaningful distinction would be. But that's</p> <p>4 not to say, given the rest of the file, I</p> <p>5 couldn't find an explanation as to why it was</p> <p>6 not only a fact that they weren't in the job</p> <p>7 they said they were but that the</p> <p>8 misrepresentation of that job title in this</p> <p>9 case was material and adverse to the interests</p> <p>10 of the loan.</p> <p>11 MR. HEALY: Mr. Davis, I'm</p> <p>12 informed that you have now run over the</p> <p>13 seven-hour limit, which we have been</p> <p>14 abiding by in our depositions.</p> <p>15 MR. DAVIS: And as you know,</p> <p>16 Mr. Healy, we've made our position known</p> <p>17 that we feel we're entitled to a second</p> <p>18 day of deposition because Mr. Aronoff is</p> <p>19 a fact witness in this case, as has been</p> <p>20 made abundantly clear by this deposition;</p> <p>21 and therefore, in order to understand</p> <p>22 what he might testify to at trial, we</p> <p>23 need to understand both what his expert</p> <p>24 opinion is and what his fact testimony</p> <p>25 may be.</p>	<p style="text-align: right;">Page 281</p> <p>1 James H. Aronoff</p> <p>2 discussion about your request for a</p> <p>3 second Aronoff deposition on Monday.</p> <p>4 MR. DAVIS: Well, I was about to</p> <p>5 move to another line of questioning, so I</p> <p>6 can't represent that I have only a few</p> <p>7 more questions --</p> <p>8 MR. HEALY: Okay.</p> <p>9 MR. DAVIS: -- to give at this</p> <p>10 time. So I don't think it's really</p> <p>11 appropriate for you to cross-examine the</p> <p>12 witness at this time because I don't</p> <p>13 believe the deposition is concluded.</p> <p>14 MR. HEALY: Well, we disagree</p> <p>15 about that.</p> <p>16 MR. DAVIS: If that's what you</p> <p>17 choose to do, I can't stop you,</p> <p>18 obviously.</p> <p>19 MR. HEALY: Okay.</p> <p>20 VIDEO TECHNICIAN: Counsel, may we</p> <p>21 change the media before you start? We're</p> <p>22 pretty close to the end of it.</p> <p>23 MR. HEALY: How much time do you</p> <p>24 have?</p> <p>25 VIDEO TECHNICIAN: About five</p>

EXHIBIT B

WILLKIE FARR & GALLAGHER LLP

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Tel: 212 728 8000
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October 2, 2017

VIA EMAIL

Michael S. Shuster
Holwell Shuster & Goldberg LLP
750 Seventh Avenue, 26th Floor
New York, NY 10019

Re: *In re Lehman Brothers Holdings Inc., et al., Ch. 11 Case No. 08-13555 (SCC)*

Dear Michael:

We write on behalf of the Plan Administrator.

On September 22, 2017, the Trustees disclosed that they would be calling James H. Aronoff as an “expert” witness at the upcoming estimation proceeding. Mr. Aronoff has submitted a series of expert reports in this matter. In these expert reports, he has disclosed that he was involved in designing and structuring the Trustees’ process for reviewing and submitting Breach Claims to the Plan Administrator. On several occasions, we have expressed to you that Mr. Aronoff’s role in the process makes him a fact witness in this case.

At his deposition on Thursday, September 28, Edmond Esses explained that Mr. Aronoff’s role in the Trustees’ Protocol process was even broader than what had been indicated in his expert reports. Indeed, for example, Mr. Esses testified that Mr. Aronoff:

- made the final decisions over which Breach Claims were actually submitted to the Plan Administrator. (Esses, 69:24-70:5 (“the decisions about whether or not to send claims to the Plan Administrator”));
- was responsible for “mapping” the representations and warranties to the governing agreements for the Trustees’ breach findings. (Esses, 87:13-20); and

- “made a final AMA determination” on the claims that were submitted to the Plan Administrator. (Esses, 114:19-24 *see also* 249:25-250:12, 262:23-263:2).

Mr. Esses’ testimony has confirmed that—in addition to his purported role as an “expert”—Mr. Aronoff is an essential fact witness. Therefore, the Plan Administrator requests that the Trustees make Mr. Aronoff available for an additional day of deposition during the week of October 9.

The Plan Administrator continues to reserve all of its rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd G. Cosenza". The signature is fluid and cursive, with the first name "Todd" and last name "Cosenza" clearly distinguishable.

Todd G. Cosenza

cc: All counsel (via email)

HOLWELL SHUSTER & GOLDBERG LLP

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Michael S. Shuster
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October 3, 2017

VIA EMAIL

Todd Cosenza
Willkie Farr & Gallagher
787 Seventh Avenue
New York, NY 10019

Re: *In re Lehman Brothers Holdings Inc. RMBS Claims Estimation Hearing*

Dear Todd:

We write on behalf of the RMBS Trustees in response to your letter dated October 2, 2017 regarding the Plan Administrator's request to make Mr. Aronoff available for a second day of deposition testimony. The Trustees will not do so. Mr. Aronoff is properly designated as an expert opining on the Trustee's loan review process during the Protocol, and his involvement in that process, which the Plan Administrator has been aware of for several years now, is consistent with his expert role. Indeed, each of the tasks you raise in your letter—designing the Trustees' review, including participating in the "mapping" of representations and warranties, as well as making decisions regarding breach claims and materiality determinations—are similar to the tasks typically undertaken by experts evaluating RMBS putback claims for litigation purposes. That the loan review here took place during the Protocol does not transform Mr. Aronoff into a fact witness nor permit the Plan Administrator additional deposition time.

Very Truly Yours,



Michael S. Shuster

cc: All counsel (via email)

EXHIBIT C

From: Dwight Healy <dhealy@hsgllp.com>
Sent: Wednesday, October 11, 2017 10:59 AM
To: Davis, Joseph; Neil R. Lieberman; Waisnor, Jonathan D.; Michael Shuster; Franklin H. Top III; Scott A. Lewis; Weitnauer, Kit; Solomon, Jason; Sigler, Sage; Munno, M. William; Guzman, Daniel; JPM.Kraut, Michael; Moore, James O.; anna.goldenhersh@morganlewis.com; Dorit Ungar Black; Daniel P. Goldberg; Lani A. Perlman; Drebsky, Dennis
Cc: Yanez, Antonio; McCallen, Benjamin; Watson, Leah; Glasner, Evan; Cosenza, Todd; Neskovic, Gorana
Subject: RE: In re Lehman Brothers - RMBS Estimation Proceeding: Aronoff

Joe:

You seem to be unfamiliar with the role of an expert in RMBS putback litigation. Mr. Aronoff role in designing and overseeing the loan review process was in the context of his role as the expert who would opine on the results of the loan review. An expert always testifies as to the basis of his/her opinion, and indeed courts in the RMBS context have required the expert to have knowledge regarding the process by which loans were reviewed and the standards used to evaluate breaches and assess materiality. That reality does not transform the expert into a fact witness. And it certainly does not mean that you are somehow entitled to two days with Mr. Aronoff. If it did, then Mr. Grice would be both a fact witness – as to the “audit” he allegedly conducted of the Trustees’ loan review process – and an expert – as to his opinions supported by his “audit.”

Although we have been prepared to discuss with you some additional time with Mr. Aronoff your reluctance to identifying any topics that you did not have an opportunity to cover with Mr. Aronoff during the seven hours of examination last Friday makes clear that in fact you have adequate time already. We nonetheless remain willing to engage in such discussions.

Dwight

From: Davis, Joseph [mailto:JDavis@WILLKIE.COM]
Sent: Tuesday, October 10, 2017 9:36 PM
To: Dwight Healy <dhealy@hsgllp.com>; Neil R. Lieberman <nlieberman@hsgllp.com>; Waisnor, Jonathan D. <JWaisnor@willkie.com>; Michael Shuster <mshuster@hsgllp.com>; Franklin H. Top III <top@chapman.com>; Scott A. Lewis <slewis@chapman.com>; Weitnauer, Kit <kit.weitnauer@alston.com>; Solomon, Jason <jason.solomon@alston.com>; Sigler, Sage <sage.sigler@alston.com>; Munno, M. William <munno@sewkis.com>; Guzman, Daniel <guzman@sewkis.com>; JPM.Kraut, Michael <mkraut@morganlewis.com>; Moore, James O. <james.moore@morganlewis.com>; anna.goldenhersh@morganlewis.com; Dorit Ungar Black <dblack@hsgllp.com>; Daniel P. Goldberg <dgoldberg@hsgllp.com>; Lani A. Perlman <lperlman@hsgllp.com>; Drebsky, Dennis <ddrebsky@nixonpeabody.com>
Cc: Yanez, Antonio <ayanez@willkie.com>; McCallen, Benjamin <BMcCallen@willkie.com>; Watson, Leah <LWatson@willkie.com>; Glasner, Evan <EGlasner@willkie.com>; Cosenza, Todd <TCosenza@willkie.com>; Neskovic, Gorana <GNeskovic@willkie.com>
Subject: RE: In re Lehman Brothers - RMBS Estimation Proceeding: Aronoff

Dwight,

Thanks for the response. As you know, our position is that Mr. Aronoff is both a fact and expert witness, and that we are entitled to depose him in each capacity, for a total of two days. Your email seems to suggest the Trustees agree that Mr. Aronoff has factual knowledge about the protocol process about which we are entitled to depose him. Mr. Aronoff is no less a fact witness than Mr. Esses or Mr. Pfeifer. In fact, Mr. Aronoff testified he was the "boss" of the Trustees' loan review process, and Mr. Esses testified that "Mr. Aronoff and his team" made the decision whether to send a claim to the Plan Administrator in the Protocol. We don't agree that by choosing to call Mr. Aronoff as an expert witness you can immunize him from testifying as a fact witness. Moreover, Mr. Aronoff repeatedly relies on the fact that he was "involved in the forensic loan review conducted under the protocol and the decisions made by the Trustees" to support his expert opinions, creating a direct link between his role as fact witness and his role as expert witness.

I did not conclude my examination of Mr. Aronoff in either capacity. I can assure you that the continued examination will cover his role in the protocol process and his expert opinions. We are under no obligation to provide an outline of the remainder of the examination, and we will not do so. Please let us know the Trustees' position.

Joe

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From: Dwight Healy [<mailto:dhealy@hsgllp.com>]

Sent: Tuesday, October 10, 2017 4:19 PM

To: Davis, Joseph <JDavis@WILLKIE.COM>; Neil R. Lieberman <nlieberman@hsgllp.com>; Waisnor, Jonathan D. <JWaisnor@willkie.com>; Michael Shuster <mshuster@hsgllp.com>; Franklin H. Top III <top@chapman.com>; Scott A. Lewis <slewis@chapman.com>; Weitnauer, Kit <kit.weitnauer@alston.com>; Solomon, Jason <jason.solomon@alston.com>; Sigler, Sage <sage.sigler@alston.com>; Munno, M. William <munno@sewkis.com>; Guzman, Daniel <guzman@sewkis.com>; JPM.Kraut, Michael <mkraut@morganlewis.com>; Moore, James O. <james.moore@morganlewis.com>; anna.goldenhersh@morganlewis.com; Dorit Ungar Black <dblack@hsgllp.com>; Daniel P. Goldberg <dgoldberg@hsgllp.com>; Lani A. Perlman <lperlman@hsgllp.com>; Drebsky, Dennis <ddrebsky@nixonpeabody.com>

Cc: Yanez, Antonio <ayanez@willkie.com>; McCallen, Benjamin <BMcCallen@willkie.com>; Watson, Leah <LWatson@willkie.com>; Glasner, Evan <EGlasner@willkie.com>; Cosenza, Todd <TCosenza@willkie.com>; Neskovic, Gorana <GNeskovic@willkie.com>

Subject: RE: In re Lehman Brothers - RMBS Estimation Proceeding: Aronoff

Joe:

On Friday I said that I was prepared to continue the discussion of your request for more time on Monday, and this is the first I have heard from you. As you know, we don't share your view that Mr. Aronoff is a fact witness. He is an expert testifying to the same topics typically covered by a reunderwriting/forensic review expert. The fact that such an expert designs or addresses the review process that was used to identify breaches hardly makes him a fact witness.

Having attended the deposition and based on the transcript, it appears to us that you were able to question Mr. Aronoff regarding both his involvement in the loan review process and his opinions, so we do not see a basis for your request for additional time.

Nevertheless, if you feel that there were topics that you were unable to cover in the time allotted for every other witness in this case, please identify them so that we can engage in a meaningful and informed discussion of your request for more time.

Dwight

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From: Davis, Joseph [<mailto:JDavis@WILLKIE.COM>]

Sent: Tuesday, October 10, 2017 12:58 PM

To: Neil R. Lieberman <nlieberman@hsgllp.com>; Waisnor, Jonathan D. <JWaisnor@willkie.com>; Michael Shuster <mshuster@hsgllp.com>; Franklin H. Top III <top@chapman.com>; Scott A. Lewis <slewis@chapman.com>; Weitnauer, Kit <kit.weitnauer@alston.com>; Solomon, Jason <jason.solomon@alston.com>; Sigler, Sage <sage.sigler@alston.com>; Munno, M. William <munno@sewkis.com>; Guzman, Daniel <guzman@sewkis.com>; JPM.Kraut, Michael <mkraut@morganlewis.com>; Moore, James O. <james.moore@morganlewis.com>; anna.goldenhersh@morganlewis.com; Dorit Ungar Black <dblack@hsgllp.com>; Daniel P. Goldberg <dgoldberg@hsgllp.com>; Dwight Healy <dhealy@hsgllp.com>; Lani A. Perlman <lperlman@hsgllp.com>; Drebsky, Dennis <ddrebsky@nixonpeabody.com>

Cc: Yanez, Antonio <ayanez@willkie.com>; McCallen, Benjamin <BMcCallen@willkie.com>; Watson, Leah <LWatson@willkie.com>; Glasner, Evan <EGlasner@willkie.com>; Cosenza, Todd <TCosenza@willkie.com>; Neskovic, Gorana <GNeskovic@willkie.com>

Subject: RE: In re Lehman Brothers - RMBS Estimation Proceeding: Aronoff

Dwight,

You mentioned on Friday that we would hear from you about scheduling another day to continue Mr. Aronoff's deposition. Please let us know the Trustees' position and what dates might work.

Thanks.

Joe

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EXHIBIT D

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Chapter 11
5 Case No. 08-13555 (SCC)

6 -----x

7
8 IN RE

9
10 LEHMAN BROTHERS HOLDINGS INC., et al.,

11 Debtors.

12 -----x

13 September 28, 2017

14 9:36 a.m.

15 Videotaped Deposition of EDMOND
16 ESSES, taken by Debtors, pursuant to
17 Notice, held at the offices of Willkie Farr
18 & Gallagher LLP, 787 Seventh Avenue, New
19 York, New York, before Todd DeSimone, a
20 Registered Professional Reporter and Notary
21 Public of the State of New York.
22
23
24
25

<p style="text-align: right;">Page 66</p> <p>1 E. ESSES</p> <p>2 Charlie and Rich, Mr. Campbell</p> <p>3 and Mr. Sauerwein, worked under the</p> <p>4 direction of Mr. Aronoff in, among other</p> <p>5 things, reviewing and approving claims for</p> <p>6 submission.</p> <p>7 Q. Did you not review and approve</p> <p>8 claims for submission?</p> <p>9 A. It wasn't my -- it wasn't my</p> <p>10 primary responsibility.</p> <p>11 Q. How much of your time did you</p> <p>12 spend doing that?</p> <p>13 A. A really rough estimate, when I</p> <p>14 say a really rough estimate, it would be 10</p> <p>15 to 20 percent of my time, if anything.</p> <p>16 Again, I was not primarily responsible for</p> <p>17 that part of the review.</p> <p>18 Q. Were there certain types of</p> <p>19 loans or claims or some other delineation</p> <p>20 that routed loan-level review to you?</p> <p>21 A. No.</p> <p>22 Q. It could have been any of the</p> <p>23 same types of loans or claims that would</p> <p>24 have been reviewed by Mr. Campbell or</p> <p>25 Mr. Sauerwein?</p>	<p style="text-align: right;">Page 68</p> <p>1 E. ESSES</p> <p>2 to 20 percent of your time doing something</p> <p>3 with respect to claims?</p> <p>4 A. I reviewed them for consistency</p> <p>5 and to ensure that under, you know, these</p> <p>6 were Charlie's main responsibility, but to</p> <p>7 ensure that the work product was up to Duff</p> <p>8 & Phelps' standards, I guess is a way of</p> <p>9 saying it.</p> <p>10 Q. Was that a quality control</p> <p>11 function?</p> <p>12 A. Not specifically, no.</p> <p>13 Q. And was the 10 to 20 percent of</p> <p>14 your time reviewing -- performing that</p> <p>15 function, was that based on a sampling of</p> <p>16 claims that had been reviewed by somebody</p> <p>17 else?</p> <p>18 A. No.</p> <p>19 Q. How were those 10 to 20 percent</p> <p>20 of your time performing that function, how</p> <p>21 was it decided that you would perform that</p> <p>22 function?</p> <p>23 A. It was my decision. It was my</p> <p>24 choice.</p> <p>25 Q. And how did you get those --</p>
<p style="text-align: right;">Page 67</p> <p>1 E. ESSES</p> <p>2 MR. HEALY: Objection, calls</p> <p>3 for speculation.</p> <p>4 A. Would you mind asking that</p> <p>5 question again?</p> <p>6 Q. The loans that you reviewed</p> <p>7 could have been the exact same kind that</p> <p>8 either Mr. Campbell or Mr. Sauerwein might</p> <p>9 have reviewed, there was no distinction?</p> <p>10 A. I don't believe I testified</p> <p>11 that I reviewed loans. I may have -- we</p> <p>12 can read back my testimony, but that wasn't</p> <p>13 my intention.</p> <p>14 Q. Fair enough. You said you -- I</p> <p>15 believe you said you reviewed and approved</p> <p>16 claims?</p> <p>17 A. Can we read back? Because I</p> <p>18 may have -- I may have -- that wasn't my</p> <p>19 intention.</p> <p>20 Q. Why don't we cut through it.</p> <p>21 Why don't you tell me what you did do.</p> <p>22 A. Again, primarily responsible</p> <p>23 for the logistical issues.</p> <p>24 Q. And other than that -- I asked</p> <p>25 whether -- well, you said that you spent 10</p>	<p style="text-align: right;">Page 69</p> <p>1 E. ESSES</p> <p>2 well, what is it that you did in that 10 to</p> <p>3 20 percent of the time to make sure that</p> <p>4 the claims were up to Duff & Phelps</p> <p>5 standards?</p> <p>6 MR. HEALY: Objection to the</p> <p>7 extent that that mischaracterizes his</p> <p>8 testimony.</p> <p>9 A. Sure. To say that a little bit</p> <p>10 differently, I just wanted to stay in the</p> <p>11 loop and know what was going on at a</p> <p>12 detailed level.</p> <p>13 Q. What specifically did you do to</p> <p>14 do that?</p> <p>15 A. Okay. I reviewed the breach</p> <p>16 submissions, the breach findings.</p> <p>17 Q. Are those the breach findings</p> <p>18 that are found in the claims tracking</p> <p>19 spreadsheet?</p> <p>20 A. It is, yes.</p> <p>21 Q. Did you ever make any changes</p> <p>22 to them?</p> <p>23 A. Not that I specifically recall.</p> <p>24 If I had a question or a suggestion, I</p> <p>25 would have took it to Charlie.</p>

<p style="text-align: right;">Page 70</p> <p>1 E. ESSES</p> <p>2 Q. Were these all claims that</p> <p>3 were -- had been decided would be made to</p> <p>4 the Plan Administrator?</p> <p>5 A. Not necessarily.</p> <p>6 Q. There could be somewhere a</p> <p>7 review was performed and a decision was</p> <p>8 made not to submit it to the Plan</p> <p>9 Administrator?</p> <p>10 A. It's possible. Not that I</p> <p>11 specifically recall.</p> <p>12 Q. Did you make the decision about</p> <p>13 whether or not to send claims to the Plan</p> <p>14 Administrator?</p> <p>15 A. No.</p> <p>16 Q. Who did?</p> <p>17 A. Mr. Aronoff and his team.</p> <p>18 Q. Well, specifically the names of</p> <p>19 the people in addition to Mr. Aronoff who</p> <p>20 decided to submit claims to the Plan</p> <p>21 Administrator.</p> <p>22 A. Sure. Mainly Mr. Campbell.</p> <p>23 Q. Did Mr. Aronoff review</p> <p>24 Mr. Campbell's work or did they sort of</p> <p>25 split up the burden?</p>	<p style="text-align: right;">Page 72</p> <p>1 E. ESSES</p> <p>2 would have reviewed all the claims?</p> <p>3 A. I do.</p> <p>4 Q. Do you believe Mr. Sauerwein</p> <p>5 would have reviewed all the claims?</p> <p>6 A. I don't -- I'm not sure one way</p> <p>7 or the other.</p> <p>8 Q. Did Mr. Sauerwein report to</p> <p>9 Mr. Campbell?</p> <p>10 A. Charlie and Rich shared</p> <p>11 responsibilities in reporting to Jim.</p> <p>12 Q. By Jim, you mean Mr. Aronoff?</p> <p>13 A. Mr. Aronoff, yes.</p> <p>14 Q. In the course of the review</p> <p>15 that you performed, did you look at</p> <p>16 anything other than the breach findings?</p> <p>17 A. Yes.</p> <p>18 Q. What did you look at?</p> <p>19 A. We also had these packets of</p> <p>20 documents that were the supporting</p> <p>21 evidence. I may have looked at those.</p> <p>22 Q. Are you referring to what you</p> <p>23 call the claim file?</p> <p>24 A. Not the RMBS claim file as</p> <p>25 defined by the protocol, but the claim</p>
<p style="text-align: right;">Page 71</p> <p>1 E. ESSES</p> <p>2 A. I'm not sure.</p> <p>3 Q. Is Mr. Campbell the person who</p> <p>4 was the first person to make a decision</p> <p>5 with respect to any claim whether or not he</p> <p>6 thought it should be -- form the basis of a</p> <p>7 claim submitted to the Plan Administrator?</p> <p>8 A. There was a significant --</p> <p>9 significant, you know, several layers of</p> <p>10 review in place with each, you know,</p> <p>11 quality control, you know, at several</p> <p>12 levels.</p> <p>13 Mr. Aronoff was ultimately</p> <p>14 responsible for making that -- making that</p> <p>15 determination.</p> <p>16 Q. Did he review all the claims?</p> <p>17 A. I'm not sure.</p> <p>18 Q. What do you think?</p> <p>19 A. I don't want to speculate.</p> <p>20 Q. Well, do you have a basis on</p> <p>21 which to believe that Mr. Aronoff reviewed</p> <p>22 all the claims?</p> <p>23 A. I don't have a basis to think</p> <p>24 one way or the other.</p> <p>25 Q. Do you believe Mr. Campbell</p>	<p style="text-align: right;">Page 73</p> <p>1 E. ESSES</p> <p>2 package I think was one of the terms we've</p> <p>3 used to refer to it, the claim package; the</p> <p>4 claim package, potentially the loan file.</p> <p>5 Q. Did you make a judgment on a</p> <p>6 claim-by-claim basis what documents to look</p> <p>7 at?</p> <p>8 A. I'm sorry, I don't understand</p> <p>9 the question.</p> <p>10 Q. When you were performing the</p> <p>11 review that you're describing, did you look</p> <p>12 at all of the documents in the claim</p> <p>13 package?</p> <p>14 A. I may have.</p> <p>15 Q. Did you look at all the claims</p> <p>16 in the loan file -- I'm sorry, all the</p> <p>17 documents in the loan file?</p> <p>18 A. I may have.</p> <p>19 Q. On what basis would you decide</p> <p>20 to look at documents as contrasted with</p> <p>21 just looking at the breach findings?</p> <p>22 MR. HEALY: Objection to the</p> <p>23 form of the question.</p> <p>24 A. I'm not sure that I had a</p> <p>25 specific basis for making that</p>

<p style="text-align: right;">Page 114</p> <p>1 E. ESSES</p> <p>2 as may be applicable in a particular</p> <p>3 agreement?</p> <p>4 MR. HEALY: Objection to form,</p> <p>5 asked and answered.</p> <p>6 A. I hope I'm not</p> <p>7 mischaracterizing my earlier testimony, but</p> <p>8 we can refer to that, but I believe -- my</p> <p>9 understanding was that there was a mapping</p> <p>10 between the breach categories and the</p> <p>11 representations and warranties, and that</p> <p>12 Jim's team made a final determination of</p> <p>13 materiality of AMA and whether to submit</p> <p>14 that claim to the Plan Administrator.</p> <p>15 Q. In what form is that mapping?</p> <p>16 A. The spreadsheet form.</p> <p>17 Q. And who are the members of the</p> <p>18 team that were responsible for that?</p> <p>19 A. As I've testified earlier --</p> <p>20 can we refer to my earlier testimony? I</p> <p>21 believe I answered this specific question.</p> <p>22 Q. I don't think you did. I want</p> <p>23 to know -- I'm asking specifically about</p> <p>24 the materiality determination, as you</p> <p>25 referred to it, or the AMA determination as</p>	<p style="text-align: right;">Page 116</p> <p>1 E. ESSES</p> <p>2 Q. Is that because you don't know?</p> <p>3 A. That's because I don't know.</p> <p>4 Q. Do you have a belief?</p> <p>5 A. As I've testified, my</p> <p>6 understanding of the process was that</p> <p>7 breach findings were submitted through the</p> <p>8 Duff & Phelps quality control process, with</p> <p>9 an ultimate determination made by</p> <p>10 Mr. Campbell under the direction and</p> <p>11 oversight of Mr. Aronoff.</p> <p>12 Q. Did Mr. Campbell make a</p> <p>13 recommendation one way or the other to</p> <p>14 Mr. Aronoff about whether or not he</p> <p>15 believed the particular breach findings</p> <p>16 adversely and materially affected the value</p> <p>17 of the loan or the interest of the</p> <p>18 depositor therein as may be applicable?</p> <p>19 A. I don't know.</p> <p>20 Q. And on the loans that you</p> <p>21 reviewed, did you make a recommendation</p> <p>22 with respect to whether you thought the</p> <p>23 breach findings were AMA?</p> <p>24 A. Absolutely not.</p> <p>25 Q. Why do you say "absolutely</p>
<p style="text-align: right;">Page 115</p> <p>1 E. ESSES</p> <p>2 we referred to it, who made that -- who</p> <p>3 were the members of the team that made that</p> <p>4 determination?</p> <p>5 MR. HEALY: Objection. That's</p> <p>6 not the question you just asked him, so</p> <p>7 that sounds like a new question.</p> <p>8 I will object on the grounds</p> <p>9 that I think it is vague and ambiguous and</p> <p>10 repetitive and may misstate his testimony,</p> <p>11 or may misassume facts.</p> <p>12 Q. Did Mr. Aronoff make that final</p> <p>13 AMA determination?</p> <p>14 A. My understanding was that</p> <p>15 Mr. Aronoff made a final AMA determination</p> <p>16 with the assistance of the members of his</p> <p>17 team.</p> <p>18 Q. And did Mr. Aronoff review and</p> <p>19 make that determination with respect to</p> <p>20 every loan-level claim, a specific</p> <p>21 determination on a specific set of facts</p> <p>22 applicable to a specific borrower? That's</p> <p>23 what I would like to know.</p> <p>24 A. You will have to ask</p> <p>25 Mr. Aronoff.</p>	<p style="text-align: right;">Page 117</p> <p>1 E. ESSES</p> <p>2 not"?</p> <p>3 A. It was not my role. I'm not --</p> <p>4 I'm not sure that I'm qualified to do that.</p> <p>5 Q. Do you believe Mr. Campbell is</p> <p>6 qualified to do that?</p> <p>7 A. Under the direction and</p> <p>8 oversight of Mr. Aronoff.</p> <p>9 Q. Mr. Campbell is qualified to do</p> <p>10 it under the direction and management of</p> <p>11 Mr. Aronoff; is that what you believe?</p> <p>12 A. I believe Mr. Aronoff is the</p> <p>13 expert in this case and Mr. Aronoff is</p> <p>14 qualified to do so. Whether he felt, you</p> <p>15 know, you will have to ask him about that</p> <p>16 detail.</p> <p>17 Q. And what do you believe makes</p> <p>18 Mr. Aronoff qualified to do so?</p> <p>19 A. I don't have a -- I don't have</p> <p>20 a specific belief one way or -- I mean, you</p> <p>21 know, we can refer to his report on his</p> <p>22 background and his experience, but I'm not</p> <p>23 sure I'm one to judge whether he is, you</p> <p>24 know, experienced and qualified.</p> <p>25 Q. Is there anybody else at Duff &</p>

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1 E. ESSES
2 Q. Did it happen?
3 A. I don't have a specific
4 recollection, but I can say with certainty
5 that it did happen.
6 Q. And who made that decision?
7 A. Well, Mr. Campbell under the
8 direction of Mr. Aronoff.
9 Q. Based on what considerations?
10 A. I'm not sure.
11 Q. What do you -- what's the best
12 of your knowledge?
13 A. That Mr. Aronoff made a
14 determination to the materiality on a
15 claim-by-claim basis.
16 Q. Looking at each and every
17 claim?
18 A. Either him or his team, yes.
19 Q. How was the information about
20 the claim communicated to Mr. Aronoff for
21 purposes of him being able to make that
22 determination?
23 MR. HEALY: Objection to the
24 extent it misstates his testimony.
25 A. The information reviewed

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1 E. ESSES
2 through the several-layer -- multiple-layer
3 QC, quality control, process was, you know,
4 as I testified, was captured into a
5 database and made its way through each
6 level of the quality control process.
7 Q. And did Mr. Aronoff then access
8 that database in order to make those
9 determinations?
10 MR. HEALY: Same objection.
11 A. I don't know.
12 Q. What are the range of
13 possibilities of the different ways where
14 Mr. Aronoff was able to review the claims
15 in order to make a determination about
16 whether the breach adversely and materially
17 affected the value of the loan or the
18 interests of the depositor?
19 MR. HEALY: Same objection, and
20 calls for speculation.
21 A. My understanding of the process
22 was that Jim, Mr. Aronoff, worked closely
23 with and oversaw and directed Mr. Campbell
24 in the making of that determination.
25 Q. I'm asking more about the

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1 E. ESSES
2 mechanics of how Mr. Aronoff saw the claims
3 at the time that he was making the AMA
4 determination.
5 MR. HEALY: Same objection I've
6 made, and I'll also note that I think you
7 have just misstated his testimony, or
8 ignored it, I'm not sure which.
9 A. I don't know.
10 Q. What about Mr. Campbell, do you
11 know how Mr. Campbell saw the claims in
12 order to help Mr. Aronoff make the AMA
13 determination?
14 A. I do know that.
15 Q. How?
16 A. I worked closely with
17 Mr. Campbell.
18 Q. How did he see the claims in
19 order to make the AMA determination?
20 A. The data was loaded into a
21 database and the claim packages were made
22 available and he reviewed them on the
23 screen.
24 I wasn't with him, you know,
25 all day, every day, but I understood that's

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1 E. ESSES
2 what he was doing, editing on the screen
3 and making that determination on, you know,
4 on each and every claim.
5 Q. Each and every one of the
6 92,000 or so claims that were submitted to
7 the Plan Administrator?
8 A. It's possible -- I think the
9 answer is yes, subject to my earlier
10 testimony.
11 Q. And I want to clarify something
12 I said. I said approximately 92,000
13 claims. I believe there were claims, any
14 number of claims on about 92,000 loans.
15 Does that sound correct to you?
16 A. Originally 94,000,
17 approximately 94,000 loans.
18 Q. So subject to your prior
19 testimony, your understanding is that
20 Mr. Campbell made an AMA determination with
21 respect to each claim asserted in
22 connection with each of the approximately
23 92,000 loans that were submitted to the
24 Plan Administrator?
25 A. I said 94,000, but yes.

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1 E. ESSES

2 Q. How many times did it occur

3 that a breach was reviewed but a finding of

4 AMA was not satisfied?

5 A. I don't know.

6 Q. Did it happen every day?

7 A. I don't know.

8 Q. Can you give me any sense of

9 dimension about how many times that

10 happened?

11 A. I cannot.

12 Q. What about were there specific

13 claim types in which a breach would not

14 satisfy the requirement to establish AMA?

15 A. I don't believe so.

16 Q. It was a loan-by-loan

17 determination?

18 A. Breach-by-breach determination,

19 yes.

20 Q. So really it could be multiple

21 determinations within each loan, correct?

22 A. Correct.

23 Q. Depending upon the facts and

24 circumstances of each particular loan?

25 A. Okay.

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1 E. ESSES

2 Q. Does that sound right?

3 A. Yeah.

4 Q. And what were the facts and

5 circumstances about each particular loan

6 that one would consider in making that AMA

7 determination from the perspective of the

8 trustees' review process?

9 A. I don't know.

10 Q. Because you never did that?

11 A. It wasn't my responsibility.

12 Q. But you observed it?

13 A. Yes, I observed it.

14 Q. Did you keep track of every

15 time you found a breach but didn't find

16 AMA?

17 MR. HEALY: Him personally?

18 MR. ROLLIN: No, in the

19 trustees' review process.

20 A. That would have -- yes, that's

21 something that we would have information

22 on.

23 Q. Would Mr. Aronoff know about

24 that?

25 A. I don't know.

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1 E. ESSES

2 Q. Mr. Aronoff was the final

3 decision-maker, wasn't he?

4 A. I believe so, yes.

5 Q. So if there was a determination

6 about whether AMA had been satisfied with

7 respect to any particular loan, that would

8 ultimately be Mr. Aronoff's decision,

9 correct?

10 MR. HEALY: Objection. I think

11 that misstates his testimony.

12 A. Right. It was delegated to his

13 very competent and qualified staff.

14 Q. When you said "right," were you

15 responding to the objection or were you

16 responding to my question?

17 A. I was responding to your

18 question with the rest of my sentence.

19 Q. So in response to my question,

20 your answer was "Right. It was delegated

21 to his very competent and qualified staff"?

22 A. To the extent you are reading

23 me back my testimony, that sounds like what

24 I said.

25 Q. Do you have any sense of how

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1 E. ESSES

2 many determinations on the question of AMA

3 were made by Mr. Aronoff personally as

4 contrasted with members of his staff?

5 A. I don't know.

6 Q. And who were the members of his

7 staff that were involved in the AMA

8 determination?

9 A. Mr. Campbell.

10 Q. Is that the only person?

11 A. Mr. Sauerwein was involved as

12 well.

13 Q. Going back to the question of

14 proof, I asked you what was the proof that

15 the trustees used to establish whether or

16 not the question of AMA had been satisfied,

17 and I don't believe I have an answer to

18 that.

19 What is the proof that the

20 trustees used to answer that question?

21 MR. HEALY: Objection. I think

22 it has been asked and answered.

23 A. I don't understand the

24 question.

25 Q. What things did the trustees

<p style="text-align: right;">Page 254</p> <p>1 E. ESSES</p> <p>2 consider in making the determination of</p> <p>3 whether or not a breach adversely and</p> <p>4 materially affected the value of the loan</p> <p>5 or the interest of the depositor therein?</p> <p>6 A. At a minimum, they considered</p> <p>7 the breach finding description narrative,</p> <p>8 at a minimum. There may have been other</p> <p>9 things that I'm not specifically aware of.</p> <p>10 Q. Anything else that you can</p> <p>11 think of? You said at a minimum. I just</p> <p>12 want to make sure I've exhausted your</p> <p>13 knowledge.</p> <p>14 A. I think Mr. Aronoff and his</p> <p>15 team took into account whether the breach</p> <p>16 finding fit the definition of AMA, which I</p> <p>17 generally understand to be an increased</p> <p>18 risk of loss on an ex-ante basis.</p> <p>19 Q. And how was an increase in the</p> <p>20 risk of loss measured?</p> <p>21 MR. HEALY: Objection.</p> <p>22 Objection to form.</p> <p>23 A. I don't specifically know, and</p> <p>24 respectfully, I don't believe I'm here to</p> <p>25 testify to that. I'm not the expert in</p>	<p style="text-align: right;">Page 256</p> <p>1 E. ESSES</p> <p>2 Q. I want to go back to my</p> <p>3 question, because I think you misunderstood</p> <p>4 it.</p> <p>5 My question was, what in the</p> <p>6 process was done that was intended to</p> <p>7 measure the increased risk of loss on any</p> <p>8 particular loan, measure the amount of the</p> <p>9 increase?</p> <p>10 MR. HEALY: I'm just going to</p> <p>11 object on the grounds that that contains</p> <p>12 assumptions that are unwarranted.</p> <p>13 Q. You can answer.</p> <p>14 A. As I've previously answered,</p> <p>15 the instructions and thresholds provided to</p> <p>16 the review firms, in the first instance,</p> <p>17 were meant to, at a first level, weed out</p> <p>18 any findings that Mr. Aronoff would not</p> <p>19 have believed to be -- fit the standard of</p> <p>20 AMA.</p> <p>21 Q. You understand that when</p> <p>22 there's an increase in something, that</p> <p>23 something starts in a place, and then it</p> <p>24 goes up in some measured way; does that</p> <p>25 make sense to you?</p>
<p style="text-align: right;">Page 255</p> <p>1 E. ESSES</p> <p>2 this matter.</p> <p>3 Q. You are not an expert at all,</p> <p>4 you are a fact witness, and I'm asking you</p> <p>5 what you know.</p> <p>6 A. As I answered, I don't know.</p> <p>7 Q. Was there anything in the</p> <p>8 process that was done that was intended to</p> <p>9 measure the increase in risk of loss on any</p> <p>10 particular loan?</p> <p>11 A. There was.</p> <p>12 Q. What was that?</p> <p>13 A. There was specific instructions</p> <p>14 to the review firms.</p> <p>15 Q. What were those instructions?</p> <p>16 A. It varied on a breach category</p> <p>17 by breach category.</p> <p>18 Q. Please proceed.</p> <p>19 A. Sure. We gave them</p> <p>20 instructions on which breach findings to</p> <p>21 collar. We made it clear that -- they had</p> <p>22 some general understanding with their</p> <p>23 experience in review, forensic reviews, and</p> <p>24 we gave them instructions not to send up</p> <p>25 certain claims.</p>	<p style="text-align: right;">Page 257</p> <p>1 E. ESSES</p> <p>2 MR. HEALY: Objection,</p> <p>3 argumentative, misassumes facts.</p> <p>4 A. That makes sense to me.</p> <p>5 Q. So I would like to know what it</p> <p>6 was that you did in the trustees' side of</p> <p>7 the protocol process that measured that</p> <p>8 increase in the risk of loss on the loans.</p> <p>9 A. As I've answered, we had</p> <p>10 procedures, policies and procedures,</p> <p>11 instructions in place, to, for example,</p> <p>12 filter out findings that decreased the risk</p> <p>13 of loss as opposed to increased.</p> <p>14 Q. So what findings decreased the</p> <p>15 risk of loss?</p> <p>16 A. Sure. So, for example, you</p> <p>17 know, our description, misrep of occupancy,</p> <p>18 applied to primary home and second home,</p> <p>19 not if the, you know, to the extent of the</p> <p>20 review firm found a stated investor</p> <p>21 property that turned out to be a primary</p> <p>22 owner-occupied home, that was not a finding</p> <p>23 we were interested in seeing.</p> <p>24 Q. Any others?</p> <p>25 A. And, you know, to take any</p>

65 (Pages 254 - 257)

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1 E. ESSES
2 example, and this would be applicable
3 across the board, if there was certain
4 misstatements or omissions of material
5 facts that decreased the risk of loss with
6 regard to any of the various categories.
7 Q. And I would like to know what
8 those are.
9 A. Sure. I mean, these are, you
10 know, the occupancy one stands out as --
11 not as the most likely, but the most
12 obvious to me, but it is possible that
13 there was a mortgage loan schedule that had
14 an LTV listed that was lower -- higher,
15 sorry, excuse me, higher than the actual
16 LTV.
17 Q. Other than those instances in
18 which you found that a certain breach
19 actually decreased the risk of loss, what
20 other breach findings did you weed out
21 because they did not meet the standard of
22 AMA?
23 A. There were other instructions
24 to the review firms where I believe, my
25 understanding was Mr. Aronoff would not

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1 E. ESSES
2 deem that to be AMA, so, you know, we
3 instructed the review firms not to cite
4 those instances.
5 Q. And what were those instances?
6 A. So I can give you another
7 example.
8 Q. Just to be clear, I'm not
9 asking for an example. I'm asking for you
10 to tell me everything that you know.
11 A. Okay. I think of it in terms
12 of specific instructions, so for me it is
13 helpful to describe it in terms of -- we
14 can go, you know, example by example to the
15 extent -- to the best of my recollection,
16 but to start with one instruction that
17 fits, I think fits this category, is we had
18 a threshold for variance in
19 misrepresentation of income that was 5
20 percent.
21 Q. So if you had a 5 percent or
22 less misrepresentation of income, that
23 would not be AMA?
24 MR. HEALY: Objection. I think
25 that slightly misstates his testimony, but

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1 E. ESSES
2 he can certainly answer.
3 A. We instructed the review firms
4 not to cite those -- that as a breach
5 finding.
6 I can't tell you whether -- I
7 cannot tell you whether that would have or
8 not have been deemed AMA, but, you know, we
9 are talking about thousands of loans,
10 hundreds of -- tens of thousands of claims,
11 and this was the instruction determined as
12 sort of like a filter for this AMA
13 determination to be made by Mr. Aronoff and
14 his team.
15 Q. Okay. Next. You gave me the
16 example of 5 percent or less on misrep
17 income.
18 A. Okay. Owner occupancy, as we
19 previously discussed, that is binary or
20 trinary. Misrepresentation of debt, so
21 there are certain instructions with regard
22 to post-close debt that we had that cutoff
23 after a certain period of time.
24 So, for example, you know, for
25 mortgage debt, that was the month following

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1 E. ESSES
2 the origination of the loan, and for
3 installment debt, you know, we asked the
4 review firms to only cite to a post-close
5 installment debt in the month following the
6 month of close if there were inquiries on
7 the credit report.
8 Q. So that one, if you have a
9 post-closing debt, and by post-closing, I
10 mean after the closing of the subject loan
11 that occurred 29 days after closing of the
12 subject loan, that is AMA, and if you've
13 got one that is 32 days after the closing
14 of the subject loan, that's not AMA?
15 MR. HEALY: Objection to form.
16 I think that misstates his testimony.
17 A. What I testified is that the
18 instruction to the review firm was to flag
19 that as a defect for Mr. Aronoff to make
20 the ultimate determination.
21 But, in your example, which was
22 not exactly accurate, if it was in the
23 following -- following the month of close,
24 then that wouldn't have even come to our
25 attention at all. We just told the review

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1 E. ESSES
2 firms we don't even want to see those.
3 Q. Other examples?
4 A. With regard to a
5 misrepresentation of employment, the review
6 firms were instructed certainly to flag
7 where they found a misstatement or omission
8 of a job title, and to the extent that the
9 job title was similar enough or not
10 material, have a significant enough
11 difference, we asked the review firms not
12 to flag those even if it was slightly --
13 slightly different.
14 Q. That goes back to the question
15 that I asked earlier, and that has to do
16 with measurement.
17 Was there any point in the
18 process for the trustees in which they
19 established a baseline risk of loss on a
20 loan?
21 MR. HEALY: Objection to form,
22 vague and ambiguous.
23 A. I understood that to be part of
24 the AMA determination to the extent, you
25 know, the way you've described it would fit

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1 E. ESSES
2 in with Mr. Aronoff's opinion.
3 Q. Do you believe that Mr. Aronoff
4 established a baseline risk of loss for
5 every loan that was ultimately made as part
6 of a claim back to the Plan Administrator?
7 MR. HEALY: Objection, vague
8 and ambiguous.
9 A. To the extent that's -- I don't
10 know.
11 Q. It's true, isn't it, that the
12 trustee -- the trustees never performed any
13 calculations to establish what the baseline
14 risk of loss was on any particular loan in
15 the protocol, right?
16 MR. HEALY: Objection, vague
17 and ambiguous.
18 A. That wasn't my testimony. I'm
19 not sure.
20 Q. There was no point in the
21 protocol where the trustees, for example,
22 ran the loans through some sort of a model
23 that measured or quantified a risk of loss,
24 correct?
25 MR. HEALY: Objection,

Page 264

1 E. ESSES
2 argumentative and vague and ambiguous.
3 A. Not for the purpose of -- I
4 don't believe for the purpose of
5 determining AMA.
6 Q. Not to establish a baseline
7 risk of loss and not to establish a new
8 risk of loss in light of the alleged
9 breach, correct?
10 MR. HEALY: Objection to form,
11 vague and ambiguous.
12 A. I don't know how Mr. Aronoff
13 would define baseline and increased in his
14 opinion, so I'm not sure I can -- I can
15 answer that question.
16 Q. Well, I'm talking about what
17 happened in the protocol, not in connection
18 with his expert opinion.
19 Was there ever a time where the
20 trustees established a baseline risk of
21 loss on the loans and then established a
22 new revised risk of loss on the loans based
23 on the allegations of breach?
24 MR. HEALY: Same objection, and
25 asked and answered.

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1 E. ESSES
2 A. I believe Mr. Aronoff made
3 that -- made that determination of AMA,
4 which to the extent, as I've testified that
5 it includes an increased risk of loss, I
6 believe he made that determination.
7 Q. How?
8 A. You'll have to ask Mr. Aronoff.
9 Q. Do you know?
10 A. I don't know.
11 Q. Did he perform any kind of a
12 quantitative analysis?
13 A. I testified earlier that I
14 don't believe we ran a model for that
15 purpose, as you've described, but I don't
16 know -- I don't know -- I don't know.
17 Q. Did you perform any analysis
18 around the pricing of the loan, that is
19 what their price was upon securitization
20 and what their price would be now that you
21 have allegations of breach?
22 A. I don't believe so.
23 Q. Do you not believe so, or you
24 know that that didn't happen?
25 A. I can pretty certainly say that

EXHIBIT 3

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Chapter 11
5 Case No. 08-13555 (SCC)

6 -----x

7
8 IN RE

9 LEHMAN BROTHERS HOLDINGS INC., et al.,

10 Debtors.

11 -----x

12 November 16, 2017

13 10:07 a.m.

14 VOLUME II

15 Continued Videotaped Deposition of
16 JAMES H. ARONOFF, taken by Plan
17 Administrator, pursuant to Notice, held at
18 the offices of Willkie Farr & Gallagher
19 LLP, 787 Seventh Avenue, New York, New
20 York, before Todd DeSimone, a Registered
21 Professional Reporter and Notary Public of
22 the State of New York.

1 ARONOFF

2 bag?

3 THE WITNESS: Yeah, if someone
4 could just grab them.

5 A. Thank you, sorry about that.
6 Page 3, I can get through.

7 Q. Okay. And this is the document
8 that has previously been marked as PA 67 I
9 believe. I'm just looking at the table. I
10 don't know, is that something -- can you
11 make out the numbers on the table?

12 A. Yeah.

13 Q. So this is a chart of the
14 breach claims that you analyzed for your
15 expert report organized by breach type,
16 right?

17 A. Yes.

18 Q. And there are four categories
19 of misrepresentation claims on this chart,
20 right?

21 MR. HEALY: I'm just going to
22 object to the prior description and
23 question. I don't think that's a complete
24 list of the breach findings that he is
25 addressing in the report, but it obviously

1 ARONOFF

2 is, by the terms of the page, a listing of
3 the more prevalent types.

4 Q. So the pending question is are
5 there four categories of misrepresentation
6 claims on this chart?

7 A. Yes.

8 Q. And am I right that there are
9 about 70,000 total breach claims based on
10 misrepresentations reflected on this chart?

11 MR. HEALY: Objection to the
12 form of the question.

13 A. I don't know. The chart speaks
14 for itself. I could add them up if you
15 want me to.

16 Q. Okay. Would you take a minute
17 and do that.

18 MR. HEALY: Mr. Davis, just to
19 avoid confusion, by breach claims you are
20 referring to breach findings as Mr. Aronoff
21 has defined them in his report, or are you
22 referring to something else?

23 You are not going to respond to
24 my question for clarification? I object to
25 the form of the question. I believe it is

1 ARONOFF

2 vague, ambiguous, and confusing.

3 A. I've got about -- I've got
4 about 70,000. Is that what you said?

5 Q. Yes. Okay.

6 A. 70,000 breach findings.

7 Q. So is it your opinion that the
8 facts of these 70,000 misrepresentation
9 breach findings listed on Table 1 here
10 support the inference that the vast
11 majority of those alleged
12 misrepresentations were intentional?

13 A. No. We discussed this in my
14 prior deposition.

15 Q. Not exactly this question, but
16 I understand. Okay. Let's mark a
17 document, please.

18 (Plan Administrator Exhibit 139
19 marked for identification.)

20 Q. So the court reporter has
21 marked as PA 139 a document entitled
22 Uniform Residential Loan Application.

23 Mr. Aronoff, do you recognize
24 the form of this document?

25 MR. HEALY: Objection to form,

1 ARONOFF

2 decisions made by the Trustees, which I
3 evaluated in connection with the issuance
4 of the Aronoff Affirmative Report."

5 Do you see that?

6 A. Yes.

7 Q. So is it your opinion that your
8 personal involvement in the loan review
9 process during the protocol should lead the
10 Court to believe that you are better
11 positioned to evaluate the trustees'
12 forensic loan review process than Mr. Grice
13 or Mr. Castro?

14 THE WITNESS: Can I hear the
15 question again, please.

16 Q. Let me reask it, actually. I
17 will say it more slowly.

18 So is it your opinion that your
19 personal involvement in the loan review
20 process during the protocol should lead the
21 Court to believe that you are better
22 positioned to evaluate the trustees' loan
23 review process than Mr. Grice or
24 Mr. Castro?

25 A. Yes.

1 ARONOFF

2 Q. And what's the basis for that
3 opinion?

4 A. To the extent I have in my
5 report opined as to the reasonable,
6 thoughtful, careful nature by which the
7 trustees went about analyzing the loan
8 files and reaching a decision as to whether
9 or not there was a valid claim to be
10 submitted under the protocol, I was there
11 and I was involved in that decision-making
12 process and can speak from personal
13 experience as to the types of questions
14 that were asked and the type of care and
15 thought that went in to making those
16 decisions with respect to the trustees'
17 process.

18 Mr. Grice and Mr. Castro know
19 nothing about that process other than what
20 they read in my reports and what they infer
21 from the claims that were made and the data
22 surrounding those claims. So that's why I
23 think that my involvement has put me in a
24 better position to evaluate and guide the
25 Court as to the trustees' process than

1 ARONOFF

2 evidence used to support those
3 deficiencies, the mapping of those
4 deficiencies into reps and warranties, and
5 the determination of the materiality of
6 those breaches of reps and warranties were
7 all done in a manner that was consistent
8 with industry custom and practice and
9 reasonable given the common understanding
10 upon -- among market participants at the
11 time the deal was issued as to what those
12 promises meant to investors.

13 Q. Are you aware of a case in
14 which a judge specifically made a finding
15 about a claimant's loan review process?

16 A. I think both in Nomura, and I
17 note this in one of my reports somewhere,
18 it has been a while now, and definitely in
19 MARM, both judges are faced with and
20 discuss the issues of mistakes that were
21 made.

22 A mistake, in my view, was you
23 said that you did something and it is
24 identified that you didn't do it, you
25 misinterpreted evidence, you used the wrong

1 ARONOFF

2 evidence, and in both those cases the
3 judges say, I think it is clear by Castel
4 in MARM, that simply because a mistake is
5 demonstrated on an individual loan or
6 handful of loans, he is not going to read
7 that to mean that in any way the process by
8 which the other breach findings have been
9 asserted and analyzed are any way infected
10 or undermined.

11 So implicitly, I think they do
12 discuss the process in saying, look, we
13 know there are a handful of mistakes, but
14 that doesn't mean that there were any
15 systemic errors, necessarily, given the
16 types of errors that were identified in
17 those cases.

18 So yeah, I think that is a
19 discussion process.

20 Q. Do you have any understanding
21 of whether the judge in this case is likely
22 to make a finding on the trustees' loan
23 review process, the quality of it?

24 MR. HEALY: Objection,
25 foundation, calls for speculation, and to

1 ARONOFF

2 What was done, as required by
3 the protocol, was to look at every single
4 loan for which the trustee thought they
5 were entitled to pursue a breach claim and
6 determine whether there were sufficient --
7 there was sufficient information in the
8 files, and attendant documentation, to
9 submit a valid claim under the protocol.

10 And to the extent there are
11 categories of breaches that are discussed
12 or groupings made, he doesn't seem to be
13 able to understand that all of that
14 information and all of that grouping and
15 all of that summarizing was rolled up from
16 the actual results that were discovered on
17 a loan-by-loan review and that the
18 information and facts for each loan and
19 each claim are laid out specifically.

20 So this was the polar opposite
21 of a one size fits all, given the
22 requirements imposed upon both parties
23 under the protocol, and that's the point of
24 this paragraph, and that's the point of
25 this section.

1 ARONOFF

2 been some where they were closer to that
3 line than others.

4 But given the enormity of the
5 undertaking and the time that was permitted
6 to pursue claims or lose the right to
7 pursue those claims, there was a real
8 attempt made to identify and put forth the
9 clearest -- the clearest, most
10 well-supported claims, and that was -- that
11 approach was further examined and verified
12 when I looked at the population that was
13 the subject of my report.

14 Q. And when you say -- when you
15 say "looked at the population that was the
16 subject of my report," what do you mean by
17 that?

18 A. I mean that as contrasted
19 with -- that was true for all of the claims
20 that were presented through the protocol
21 process, to the extent I was there, that
22 that overriding attempt to submit only the
23 clearest and most easily understood claims,
24 and then to the extent I wanted to assure
25 myself that that was true for the smaller

ARONOFF

number of loans and claims that were the subject matter of my report, I was confident that that was the case as well, that the claims that were the subject matter of my report also reflected, if you think of -- if you think of the reasonable, valid claims as an archery target and you're permitted under the governing documents and custom and practice and the protocol to submit everything that is on that target, and you shouldn't be submitting anything outside the target, the attempt wasn't made to use the whole target, the attempt was made to stick with the 7, 8, 9s and 10s in the middle of that target, and to the extent something was a valid, reasonable, thoughtful claim, given the time and expense that was involved here, we tried to avoid the close calls and not waste time or jam up the process with close calls and stick with the strongest, most clearly evidenced breach findings. That was the goal.

(Plan Administrator Exhibit 143

EXHIBIT 4

1
2 ** C O N F I D E N T I A L **
3 UNITED STATES BANKRUPTCY COURT
4 SOUTHERN DISTRICT OF NEW YORK
5 Chapter 11
6 Case No. 08-13555(SCC)
7 -----x
8 IN RE
9 LEHMAN BROTHERS HOLDINGS INC., et al.,
10 Debtors.
11
12 -----x
13 November 17, 2017
14 9:37 a.m.
15
16 VOLUME III
17
18 Continued Videotaped Deposition of
19 JAMES H. ARONOFF, taken by Plan
20 Administrator, pursuant to Notice, held at
21 the offices of Willkie Farr & Gallagher
22 LLP, 787 Seventh Avenue, New York, New
23 York, before Todd DeSimone, a Registered
24 Professional Reporter and Notary Public of
25 the State of New York.

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17 ZACHARY TRUMPP, Lehman Brothers
18 (Via Phone)
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1 ARONOFF
2 THE VIDEOGRAPHER: Good morning.
3 We are going on the record at 9:37 a.m. on
4 Friday, November 17th, 2017.
5 Please note the microphones are
6 sensitive and may pick up whisperings,
7 private conversations and cellular
8 interference. Please turn off all cell
9 phones or place them away from the
10 microphones as they can interfere with
11 deposition audio. Audio and video
12 recording will continue to take place
13 unless all parties agree to go off the
14 record.
15 This is media unit number one
16 of the video-recorded deposition of James
17 H. Aronoff in the matter of Lehman Brothers
18 Holdings, et al. This case is filed in
19 United States Bankruptcy Court, Southern
20 District of New York, Chapter 11, case
21 number 08-13555.
22 This deposition is being held
23 at the office of Willkie Farr & Gallagher
24 located at 787 Seventh Avenue, New York,
25 New York. My name is Marc Friedman. I'm

1 ARONOFF
2 **A. I don't know what the trustees'**
3 **view would be. I haven't thought about**
4 **whether or not I think this borrower lied**
5 **or not.**
6 MR. DAVIS: Okay, I appear to
7 be out of time.
8 MR. HEALY: I have a few
9 questions, Mr. Aronoff. Do you need a
10 break before we continue?
11 MR. DAVIS: I do actually.
12 MR. HEALY: Okay.
13 THE VIDEOGRAPHER: The time is
14 2:23. We are going off the record.
15 (Recess taken.)
16 THE VIDEOGRAPHER: The time is
17 2:36. We are back on the record.
18 EXAMINATION BY MR. HEALY:
19 **Q.** Mr. Aronoff, I'm going to refer
20 you to the last line of questioning by
21 Mr. Davis before we finished.
22 Do you have a view as to
23 whether the facts that support the breach
24 findings for misrepresentation claims that
25 are the subject of your report in many

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1 ARONOFF
2 instances support the conclusion that the
3 borrower was in fact intentionally making a
4 misstatement?
5 MR. DAVIS: Objection, leading.
6 **A. Yes.**
7 **Q.** What is your view?
8 MR. DAVIS: Leading.
9 **A. That although a showing of**
10 **intention is not required to support a**
11 **misrepresentation breach finding, given the**
12 **nature of the misstatements or the enormous**
13 **difference between, in many cases, the**
14 **statements that were made in order to**
15 **secure the loan and the actual facts that**
16 **were uncovered or identified in the**
17 **forensic review, I believe that in the vast**
18 **majority of cases the statements made by**
19 **the borrowers were intentional.**
20 **Q.** Would you turn to Exhibit 67,
21 that is PA Exhibit 67. Is that a copy of
22 your affirmative expert report in this
23 case?
24 **A. Yes.**
25 **Q.** Would you turn to page 43 of

1 ARONOFF
2 that report. Now, on pages 43 and 44, do
3 you describe certain criteria that apply to
4 the misrepresentation of income breach
5 findings that are the subject of your
6 report?
7 MR. DAVIS: Objection, vague.
8 **A. Yes.**
9 **Q.** Let's start on page 43. You
10 see that it says that the review firms were
11 instructed to use a 5 percent variance
12 between the misstated income and verified
13 income as a threshold for determining the
14 significance of an income
15 misrepresentation?
16 **A. I see that.**
17 **Q.** Was that a criteria that was
18 used during the course of the loan review
19 process conducted during the protocol
20 process?
21 **A. Yes, that's correct.**
22 **Q.** Do you have a view as to
23 whether a misrepresentation of income that
24 was less than 5 percent would still be a
25 valid breach?

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1 ARONOFF
2 MR. DAVIS: Leading.
3 **A. Yes.**
4 **Q.** What's your view?
5 **A. It still is a valid breach**
6 **claim because it would -- to the extent**
7 **there was a misstatement of income that was**
8 **material and adverse to the interests of**
9 **investors, that would provide a claim.**
10 **There is no variance in the rep or there is**
11 **no variance in fact, in custom and**
12 **practice.**
13 **Q.** To the extent that a
14 misrepresentation of income breach finding
15 was submitted during the protocol that had
16 associated with it a less than 5 percent
17 variance and that breach finding is not a
18 subject of your report, does that indicate
19 that there was some deficiency in the
20 process, that was conducted during the
21 protocol process?
22 MR. DAVIS: Objection, leading,
23 incomplete hypothetical.
24 **A. No, not in any way.**
25 **Q.** Would you go to page 44. Now,

1 ARONOFF
2 in the first paragraph on page 44, you
3 discuss the difference between same-year
4 and near-year evidence. Do you see that?

5 **A. Yes.**

6 **Q.** And do you see that you
7 describe certain criteria that apply to the
8 loans within -- that are the subject of
9 your report that are based upon near-year
10 evidence, do you see that?

11 **A. Yes.**

12 **Q.** Now, towards the bottom of that
13 paragraph it states "The breach findings
14 supported by near-year evidence for
15 salaried borrowers are based only on
16 evidence showing variances of at least 30
17 percent between the represented and
18 verified income, if the loan was originated
19 in 2007 and later."

20 Do you see that?

21 MR. DAVIS: I'm going to
22 object. This is outside the scope of my
23 examination, it is not proper cross, and it
24 is leading.

25 **Q.** You can answer the question,

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1 ARONOFF

2 Mr. Aronoff.

3 **A. I do see that.**

4 **Q.** Was that a criteria or a screen
5 that was applied during the protocol
6 process?

7 MR. DAVIS: Same objections.

8 **A. No.**

9 **Q.** Do you have a view as to
10 whether breach findings that did not
11 satisfy that criteria that were put forth
12 during the protocol process were valid
13 breach findings?

14 MR. DAVIS: Same objections.

15 **A. Yes, they were valid breach**
16 **findings.**

17 **Q.** Does the fact that that
18 category of breach findings is not included
19 in the loans that are the subject of your
20 report cause you any concerns about the
21 reliability of the loan review process that
22 was conducted during the protocol process
23 on behalf of the trustees?

24 MR. DAVIS: Counsel, at this
25 point I'm going to object. This line of

1 ARONOFF

2 examination is improper, it is outside the
3 scope of my examination, and if you are
4 going where I think you are going, it is
5 too late to introduce evidence in this case
6 on a subject that the trustees have taken
7 the position is protected as privileged.

8 If you keep down this road, you
9 proceed at your own peril and in the Plan
10 Administrator's view you will be waiving
11 attorney-client privileges and work product
12 protections on this subject.

13 **Q.** To be clear, Mr. Aronoff, I'm
14 not asking you for any information that you
15 have that you received from counsel or that
16 was derived from communications with
17 counsel. Do you understand that
18 instruction?

19 MR. DAVIS: And to be clear,
20 Mr. Healy, that does not cure the issue, in
21 our view. Proceed if you wish.

22 **Q.** Mr. Aronoff, do you understand
23 the instruction?

24 THE WITNESS: Can I hear the
25 instruction again, please?

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1 ARONOFF

2 (The record was read.)

3 MR. DAVIS: Same objections.

4 Outside the scope of my examination.

5 MR. HEALY: Can you now reread
6 the question that I asked Mr. Aronoff to
7 which Mr. Davis objected.

8 (The record was read.)

9 MR. DAVIS: And vague.

10 **A. No.**

11 **Q.** Now, the next paragraph on page
12 44 talks about the use of near-year
13 evidence for misrepresentation of income
14 claims asserted with respect to
15 self-employed borrowers. Do you see that?

16 MR. DAVIS: Leading. Same
17 objections.

18 **A. Yes.**

19 **Q.** And in the second sentence it
20 says that "The breach findings supported by
21 near-year evidence for self-employed
22 borrowers are based only on evidence
23 showing variances of at least 100 percent
24 between the misstated and verified income
25 if the evidence was at least two years from

1 ARONOFF
2 origination and at least 50 percent for
3 loans originated in 2007 and later."
4 Do you see that?
5 MR. DAVIS: Same objection.
6 **A. I do.**
7 **Q.** Were the criteria that are set
8 forth in that sentence applied during the
9 course of the protocol process?
10 MR. DAVIS: Same objections.
11 **A. No.**
12 **Q.** Does the fact that breach
13 findings that did not satisfy those
14 criteria are not included in the scope of
15 your report suggest to you that there was
16 some deficiency or unreliability in the
17 loan review process conducted during the
18 protocol on behalf of the trustees?
19 MR. DAVIS: Same objections,
20 leading, outside the scope.
21 **A. No, it does not.**
22 **Q.** With respect to the last two
23 answers that you have given me with respect
24 to these two criteria and the prior
25 criteria with respect to salaried

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1 ARONOFF
2 borrowers, can you explain why you don't
3 think the omission of those categories from
4 the scope of your report creates any
5 uncertainty about the reliability of the
6 process?
7 MR. DAVIS: Compound, leading,
8 outside the scope of my examination,
9 improper cross, or direct.
10 THE WITNESS: Can I hear the
11 question, please.
12 (The record was read.)
13 MR. DAVIS: Also lacks
14 foundation.
15 MR. HEALY: I'm going to break
16 it down actually.
17 **Q.** Let's go to page 44 and look at
18 the last sentence in the first paragraph of
19 page 44. Are you with me?
20 **A. The last sentence in the first**
21 **paragraph, yes.**
22 **Q.** Can you explain why you do not
23 think that the omission of breach findings
24 that do not satisfy that criteria does not
25 render -- raise any concern about the

1 ARONOFF
2 reliability of the loan review process
3 conducted during the protocol process on
4 behalf of the trustees?
5 MR. DAVIS: Objection, vague,
6 leading, outside the scope of my opinion,
7 and this appears to be counsel's attempt to
8 elicit new opinions three days before the
9 beginning of trial from this witness,
10 entirely inappropriate.
11 **Q.** You can answer the question,
12 Mr. Aronoff.
13 **A. The reason is that, as I stated**
14 **previously, the way in which the breach**
15 **findings were ascertained under the**
16 **protocol with a 5 percent variance was**
17 **appropriate, thoughtful, reasonable and**
18 **well within industry custom and practice.**
19 **So to the extent a more stringent or**
20 **conservative subset of that universe, using**
21 **a 30 percent in certain instances,**
22 **certainly would not in any way affect my**
23 **view that what was submitted under the**
24 **protocol was valid and reasonable.**
25 **Q.** Let me ask you to look at the

615
1 ARONOFF
2 second to last sentence in the final
3 paragraph on page 44.
4 **A. Okay.**
5 **Q.** Can you explain why the
6 omission of loans that do not satisfy
7 either one of those criteria from the loans
8 that are the subject of your report does
9 not cause you any concern about the
10 reliability of the loan review process
11 conducted during the protocol on behalf of
12 the trustees?
13 MR. DAVIS: Same objections,
14 vague, leading, outside the scope of my
15 direct -- or my cross, sorry.
16 **A. The same answer. This is a --**
17 **this is a subset of the claims that were**
18 **made under the protocol, which I believe**
19 **were reasonable and valid, and so to the**
20 **extent this is simply more conservative**
21 **standards as to which -- as to which claims**
22 **will be pursued doesn't affect the --**
23 **doesn't affect that in any way.**
24 **Q.** Could I ask you to turn to
25 Exhibit 68, please. Would you look at

1 ARONOFF
2 **case. However, I will note that in my**
3 **experience it is fairly common and not**
4 **unusual at all for the number of valid**
5 **claims that come out of a forensic loan**
6 **review to be a larger universe of loans**
7 **than are ultimately the subject matter of**
8 **the related action. So the fact that that**
9 **happened here causes me no pause at all.**

10 Q. Does the fact that some of the
11 categories of breach findings that you do
12 address in your report not -- strike that.

13 Does the fact that not all of
14 the loans or claims that were identified
15 during the protocol process are included
16 within the categories of breach findings
17 that you do address create any concern on
18 your part about the reliability of the loan
19 review process?

20 MR. DAVIS: Objection, outside
21 the scope, leading, and vague.

22 A. No.

23 Q. Do you have an understanding
24 that the -- strike that.

25 Let's turn back to the

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1 ARONOFF
2 misrepresentation breach claims that we
3 talked about a few minutes ago. I know
4 that you told me in your testimony that
5 there were various reasons why those --
6 certain claims within those categories may
7 have been dropped, but let me -- let me ask
8 you to assume that all of the breach
9 findings for misrepresentation of income
10 that are not being pursued in this
11 proceeding were dropped because they were
12 the result of errors, and let me further
13 ask you to assume that out of a total of
14 some 37,000 breach claims that were put
15 forward in the protocol, approximately
16 2,895 were not being pursued at the
17 estimation hearing.

18 A. How many?

19 Q. 2,895 out of 37,313. And let
20 me ask you to assume that that represents
21 about a 7.8 percent.

22 Does that fact cause you to
23 conclude that there was a systemic
24 deficiency in the loan review process that
25 was conducted on behalf of the trustees

1 ARONOFF
2 during the protocol?

3 MR. DAVIS: Objection.

4 A. No.

5 MR. DAVIS: Hold on. You are
6 leading this witness obviously by the nose.
7 You are asking him about topics that I did
8 not cover over the last two days of
9 deposition, and, as I said before, you are
10 proceeding at your own peril.

11 Q. Can you explain the reason for
12 your response?

13 MR. DAVIS: Same objections.

14 A. **Even assuming that there was an**
15 **error rate of 7 percent with respect to a**
16 **particular category of breach finding,**
17 **which I don't think there was, that's not**
18 **to say there might not have been errors,**
19 **the fact that there is an error on an**
20 **individual loan or a small group of loans,**
21 **given that the analysis was done on a**
22 **loan-by-loan basis based on specific**
23 **information as it related to each specific**
24 **loan that was the subject of the review,**
25 **there's no correlation or relationship**

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1 ARONOFF
2 **between an error in one loan and a**
3 **potential error in the loans for which**
4 **there is no error, particularly if the**
5 **opportunity exists to review the 93 percent**
6 **that in your hypothetical don't contain**
7 **errors.**

8 Q. Did the Plan Administrator have
9 the opportunity to review the 93 percent of
10 misrepresentation of income loans that I've
11 asked about in my hypothetical?

12 MR. DAVIS: Same objections.

13 Q. Let me ask it another way.

14 Did the Plan Administrator have
15 the opportunity to review and respond to
16 each of the breach claim submissions made
17 by the trustees during the course of the
18 protocol?

19 MR. DAVIS: Same objections.

20 A. **That was my understanding.**

21 Q. And in your reports have you
22 described the nature of the Plan
23 Administrator's responses submitted during
24 the protocol process?

25 MR. DAVIS: Same objections.

1 ARONOFF
2 **A. Yes.**
3 **Q.** And is it your view that for
4 the vast majority of instances the Plan
5 Administrator offered no particularized
6 objection --
7 MR. DAVIS: Same objections.
8 **Q.** -- to the breach claims
9 submitted by the trustees?
10 MR. DAVIS: Same objections.
11 THE WITNESS: Can I hear the
12 question again, please.
13 (The record was read.)
14 **A. Yes.**
15 **Q.** And I just talked to you about
16 misrepresentation of income.
17 Let me talk to you about
18 misrepresentation of occupancy. Let me ask
19 you to assume that of the claims submitted
20 with a misrepresentation of occupancy
21 breach finding during the protocol,
22 approximately 1.3 percent of those are not
23 the subject of your report.
24 MR. DAVIS: Same objections.
25 **Q.** And let me ask you to assume

629
1 ARONOFF
2 that the 1.3 percent were all withdrawn on
3 the basis that there was some error in the
4 breach finding that was submitted during
5 the protocol process.
6 MR. DAVIS: Same objections.
7 **Q.** Does that give you any concern
8 that there are some systemic deficiencies
9 in the loan review process that was
10 conducted during the protocol on behalf of
11 the trustees?
12 MR. DAVIS: Same objections.
13 **A. No. I mean, that means 99**
14 **percent of the claims were correct.**
15 **Q.** Let me ask you about
16 misrepresentation of debt obligations, and
17 let me ask you to assume that 3.7 percent
18 of the misrepresentation of debt obligation
19 breach findings submitted during the
20 protocol process are not the subject of
21 your report.
22 MR. DAVIS: Same continuing
23 objections.
24 **Q.** Let me further ask you to
25 assume that all of the breach findings

1 ARONOFF
2 represented in that 3.7 percent had some
3 error associated with the breach finding.
4 Do you have a view as to
5 whether that fact indicates a systemic
6 deficiency in the loan review process that
7 was conducted on behalf of the trustees
8 during the protocol?
9 MR. DAVIS: Same objections,
10 and I would add, Mr. Healy, that the judge
11 just told you yesterday that it was too
12 late to put in additional expert opinions,
13 and effectively what you are doing is
14 eliciting an improper sur-reply.
15 **Q.** Could you answer my question,
16 please?
17 THE WITNESS: I need to hear
18 the question again, please.
19 (The record was read.)
20 **A. I don't think those -- the**
21 **facts in your hypothetical that you asked**
22 **me to assume reflect a deficiency in the**
23 **process for the same reasons I stated with**
24 **respect to the misrepresentation of income**
25 **hypothetical.**

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1 ARONOFF
2 **Q.** And let me ask you, finally,
3 about excessive DTI breach findings. Let
4 me ask you to assume that approximately 6
5 percent of the excessive DTI breach
6 findings that were submitted during the
7 protocol process are not included in the
8 excessive DTI breach findings that are the
9 subject of your report.
10 MR. DAVIS: Same objections.
11 Mr. Healy, may I ask you, are you reading
12 from one of our expert reports?
13 MR. HEALY: I am not reading
14 from the body of one of your expert
15 reports.
16 MR. DAVIS: Are you referring
17 to one of our expert reports as you ask
18 these questions?
19 MR. HEALY: I'm asking the
20 witness hypotheticals.
21 MR. DAVIS: You are not going
22 to answer my question whether you are
23 referring to one of our expert reports?
24 MR. HEALY: I don't think I
25 have an obligation to respond to that. I'm

1 ARONOFF
2 asking the witness a hypothetical.
3 MR. DAVIS: That is fine. The
4 judge can ask you that question. Same
5 objections.
6 THE WITNESS: I need to hear
7 the question again, I'm sorry.
8 Q. Let me start again.
9 So we are talking about
10 excessive DTI breach findings. Are you
11 with me?
12 A. Yes.
13 Q. So let me ask you to assume
14 that 6 percent of the excessive DTI breach
15 findings identified during the protocol
16 process are not the subject of your expert
17 opinion, and let me ask you to assume for
18 purposes of this question that all of the
19 breach findings represented by that 6
20 percent contain some error with respect to
21 the breach finding.
22 Does that fact cause you to
23 believe that the loan review process
24 conducted during the protocol on behalf of
25 the trustees suffered from some systemic

633
1 ARONOFF
2 deficiency?
3 MR. DAVIS: Same objections,
4 and vague.
5 A. **No, for the same reasons as**
6 **I've stated with respect to the prior**
7 **hypotheticals.**
8 MR. HEALY: I pass the witness.
9 MR. DAVIS: I need to take a
10 break.
11 THE VIDEOGRAPHER: The time is
12 3:13. We are going off the record.
13 (Recess taken.)
14 THE VIDEOGRAPHER: The time is
15 3:36. We are back on the record. This
16 will be the start of media unit number
17 four.
18 EXAMINATION BY MR. DAVIS:
19 Q. Mr. Aronoff, when did you first
20 form the opinions you just offered in
21 response to Mr. Healy's questions?
22 A. **The answers that I gave to the**
23 **questions were based on understandings and**
24 **beliefs that I have had probably since I**
25 **offered my affirmative report. But the**

1 ARONOFF
2 **ones with respect to Mr. Grice's comments**
3 **about the impact of a mistake on any**
4 **individual loan may have on the process or**
5 **the loans that were the subject of my**
6 **report we discussed yesterday and is**
7 **discussed in my reply report.**
8 Q. Why didn't you provide all of
9 the opinions you just offered in response
10 to Mr. Healy's questions in your reply
11 report?
12 MR. HEALY: Objection, overly
13 broad, vague and ambiguous, argumentative,
14 assumes facts.
15 A. **I provided the same opinions in**
16 **my reply report as I just offered now in**
17 **different contexts. The specific context**
18 **and specific hypotheticals that I addressed**
19 **just now I was not asked to opine on in my**
20 **reports.**
21 Q. Okay. So you are telling me
22 that you provided the opinions you just
23 gave in response to Mr. Healy's questions
24 in your reply report; is that right?
25 MR. HEALY: Objection to form,

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1 ARONOFF
2 misstates his testimony.
3 A. **That's not what I said.**
4 Q. Okay. So that's not correct?
5 A. **That's not correct.**
6 Q. Okay. Why didn't you provide
7 those opinions that you just gave in
8 response to Mr. Healy's questions in your
9 reply report?
10 MR. HEALY: Objection, assumes
11 that Mr. Grice had submitted his reply
12 report before Mr. Aronoff submitted his
13 reply report.
14 MR. DAVIS: That's an improper
15 speaking objection.
16 MR. HEALY: It is a totally
17 confusing and misleading question.
18 THE WITNESS: Could I hear the
19 question that is standing, please.
20 (The record was read.)
21 A. **Because I didn't just give any**
22 **opinions. I answered questions that were**
23 **asked of me.**
24 Q. So you didn't give any opinions
25 in response to Mr. Healy's questions just

EXHIBIT 5

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Chapter 11
5 Case No. 08-13555 (SCC)

6 -----x

7
8 IN RE

9
10 LEHMAN BROTHERS HOLDINGS INC., et al.,

11 Debtors.

12 -----x

13 September 28, 2017

14 9:36 a.m.

15 Videotaped Deposition of EDMOND
16 ESSES, taken by Debtors, pursuant to
17 Notice, held at the offices of Willkie Farr
18 & Gallagher LLP, 787 Seventh Avenue, New
19 York, New York, before Todd DeSimone, a
20 Registered Professional Reporter and Notary
21 Public of the State of New York.
22
23
24
25

1 E. ESSES

2 including sort of the loan load files, and
3 we believe that was sufficient. We didn't
4 require, because we had those load files,
5 we didn't believe it was necessary, and we
6 had the other supplemental sources,
7 necessary to, you know, go through that
8 process of getting the monthly loan tapes.

9 Q. You believe in the trustees'
10 protocol process, don't you?

11 A. Very much so, yes.

12 Q. You believe that the trustees
13 hired all the right professionals?

14 A. I do, yes.

15 Q. And they represent all of the
16 applicable disciplines?

17 A. I do, yes.

18 Q. They followed the right
19 process?

20 A. I very much do, yes.

21 Q. It was well-designed?

22 A. Very well-designed.

23 Q. The trustees and their
24 professionals collected all of the
25 documents they believed were appropriate

1 E. ESSES

2 for this project?

3 A. I believe -- I believe so, yes.

4 Q. They collected all the evidence
5 they believed was necessary and appropriate
6 for this project?

7 A. Yes.

8 Q. Duff & Phelps did due diligence
9 on every single loan?

10 A. To the extent, as I've
11 testified earlier, yes.

12 Q. And you believe you found all
13 the claims on each loan?

14 A. I can't -- I can't say that
15 with certainty, sitting here today.

16 Q. You believe that you instituted
17 a process, applied a process that should
18 have found every claim on every loan, don't
19 you think?

20 MR. HEALY: Objection to form.
21 I think that misstates his testimony
22 actually.

23 A. I think the process was robust
24 and sufficient to -- well, again, you know,
25 I think there was an understanding that

1 E. ESSES

2 every valid claim -- every claim that was
3 submitted was valid is my testimony.

4 Q. Every one of the approximately
5 94,000 -- every one of the claims on the
6 approximately 94,000 loans was valid?

7 A. Well, we withdrew approximately
8 2,000 of those, leaving 92,000. Yes, I
9 believe the ones that were not withdrawn
10 were valid.

11 Q. So you believe that every one
12 of the claims on 92,000-plus loans was
13 valid?

14 A. I believe we followed our
15 procedures and policies, which were
16 sufficient and robust, and that -- and that
17 every claim was submitted in accordance
18 with those policies and procedures.

19 Q. I asked you whether or not you
20 believed they were valid, and you told me
21 you believed you followed your policies and
22 procedures and that every claim was
23 submitted in accordance with those policies
24 and procedures. So I would like to go back
25 to my question.

1 E. ESSES

2 Do you believe that every one
3 of the claims on the 92,000-plus loans was
4 valid?

5 MR. HEALY: Objection, asked
6 and answered.

7 A. Sitting here today, I don't
8 know that I can testify to that.

9 Q. Do you believe that you
10 submitted invalid claims to the Plan
11 Administrator?

12 A. I wouldn't think so, but it's
13 possible. For example, you know, you're
14 aware of certain step two withdrawals, so
15 that happened, there wasn't a very great
16 number, it was a very small number of
17 those, and not always -- the claim
18 withdrawals do not result in a loan being
19 withdrawn, there are multiple breaches per
20 loan.

21 But to the extent we followed
22 our policies and procedures, I think
23 it's -- it's a strong indication that all
24 the submitted claims were valid.

25 Q. A strong indication that all of

1 E. ESSES

2 the claims were valid, but you're not sure
3 whether all the claims were valid?

4 A. I can't, sitting here today, I
5 can't tell you that we didn't make, you
6 know, a small -- a minute amount of
7 mistakes would not surprise me.

8 Q. At most, at most, you made a
9 minute amount of mistakes?

10 A. I think the process was
11 extremely robust, including, you know, the
12 experienced and qualified review firms and
13 several layers of quality control at Duff &
14 Phelps, with extensive experience with
15 these types of reviews, so yes.

16 MR. HEALY: Mr. Rollin, I don't
17 want to interrupt your line here, but we
18 have been going for something like an hour
19 and 20. It is late in the afternoon. I
20 would suggest a break.

21 MR. ROLLIN: I'm fine with
22 that.

23 THE VIDEOGRAPHER: The time is
24 now 4:59. We are going off the record.
25 This is the end of media file number five.

1 E. ESSES

2 (Recess taken.)

3 THE VIDEOGRAPHER: We are now
4 back on the record. The time is 5:25.
5 This is the beginning of media file number
6 six.

7 BY MR. ROLLIN:

8 Q. Mr. Esses, you understand that
9 15,000 loans that were submitted to the
10 Plan Administrator under the protocol are
11 now no longer at issue in the estimation
12 proceeding, right?

13 A. I have a general understanding
14 of that, yes.

15 Q. Do you believe that those
16 15,000 loans are not valid claims?

17 A. As I testified earlier with
18 regard to the 92,000 claims submitted
19 through the protocol, I do believe they are
20 all valid claims.

21 Q. So you believe the trustee
22 withdrew valid claims from the estimation
23 proceeding?

24 A. I didn't understand the
25 question.

1 E. ESSES

2 not sure what you're doing.

3 Q. Let me ask you this question:

4 When did you first learn that
5 these claims would not be pursued in the
6 estimation proceeding?

7 MR. HEALY: Mr. Esses, if that
8 information, answering that question, would
9 cause you to disclose the content of any
10 communication with counsel, you're
11 instructed not to answer the question.

12 MR. ROLLIN: That is not the
13 attorney-client privilege. That is not a
14 correct statement of the law. When he
15 learned a fact is not privileged.

16 MR. HEALY: I've given him my
17 instruction, we can disagree about it, but
18 he has the instruction.

19 A. Duff & Phelps was involved in
20 the preparation of exhibits to
21 Mr. Aronoff's expert report, and to that
22 extent I learned which claims were included
23 and not included.

24 Q. And my question specifically
25 was when.